

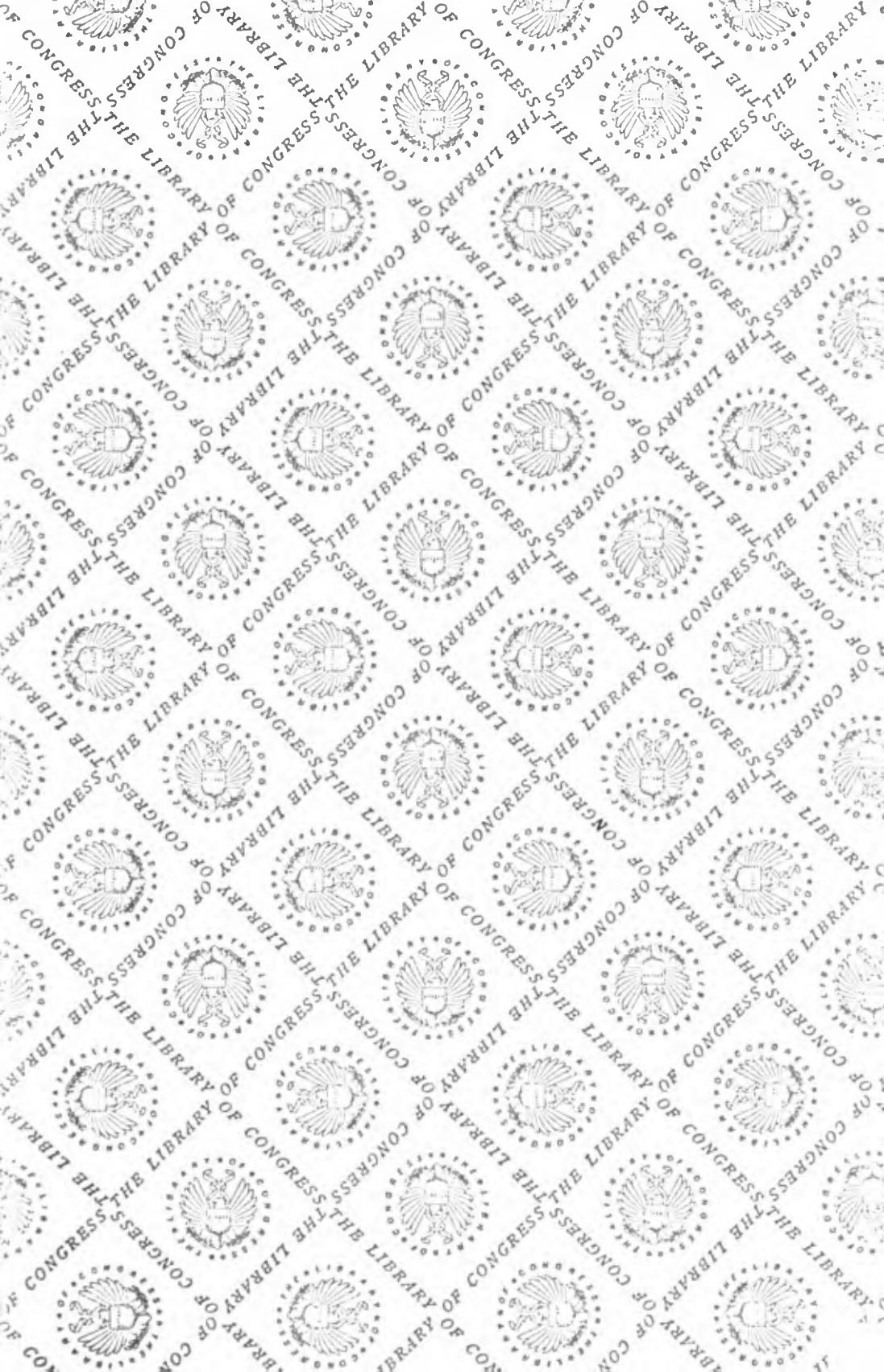
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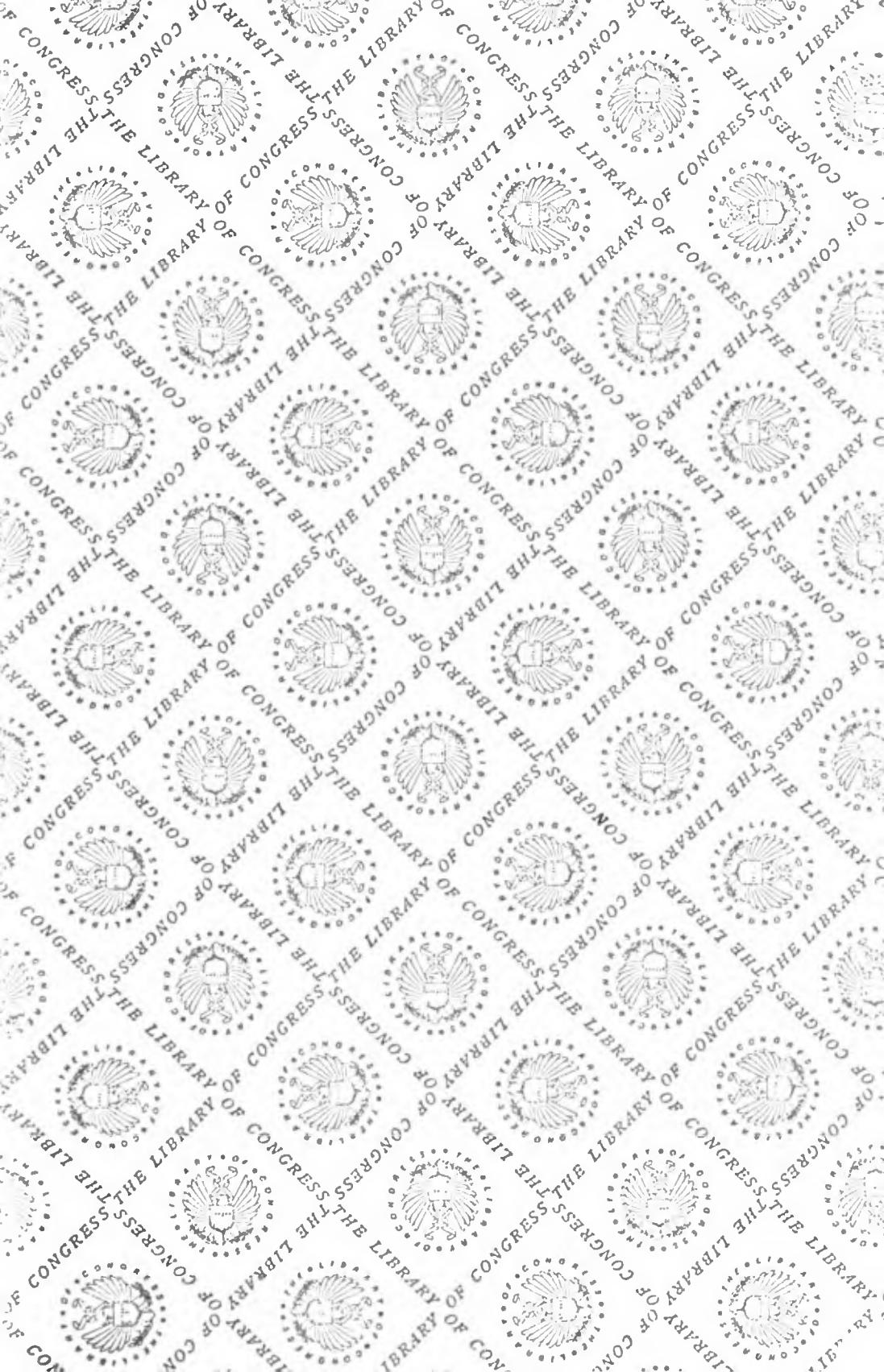
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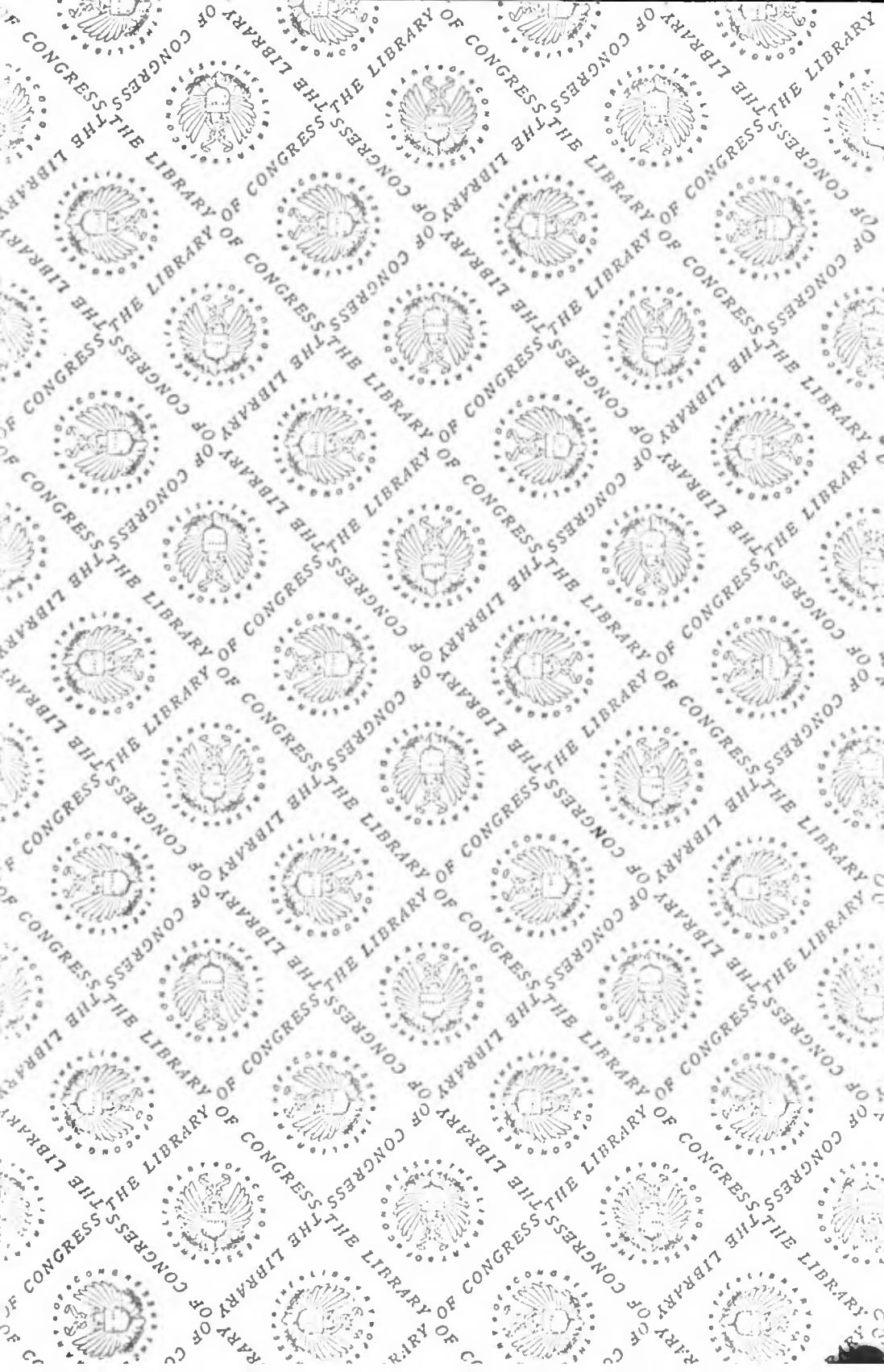


















*United States,*

**CIVIL DIVISION, DEPARTMENT OF JUSTICE, AND  
THE U.S. FOREIGN CLAIMS SETTLEMENT COM-  
MISSION BUDGET AUTHORIZATIONS**

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**HEARING**  
BEFORE THE  
**SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENTAL RELATIONS**  
OF THE  
**COMMITTEE ON THE JUDICIARY**  
**HOUSE OF REPRESENTATIVES**  
NINETY-EIGHTH CONGRESS  
FIRST SESSION  
ON

BUDGET AUTHORIZATIONS FOR THE CIVIL DIVISION, DEPARTMENT OF JUSTICE, AND THE U.S. FOREIGN CLAIMS SETTLEMENT COMMISSION

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FEBRUARY 8, 1984

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**Serial No. 32**



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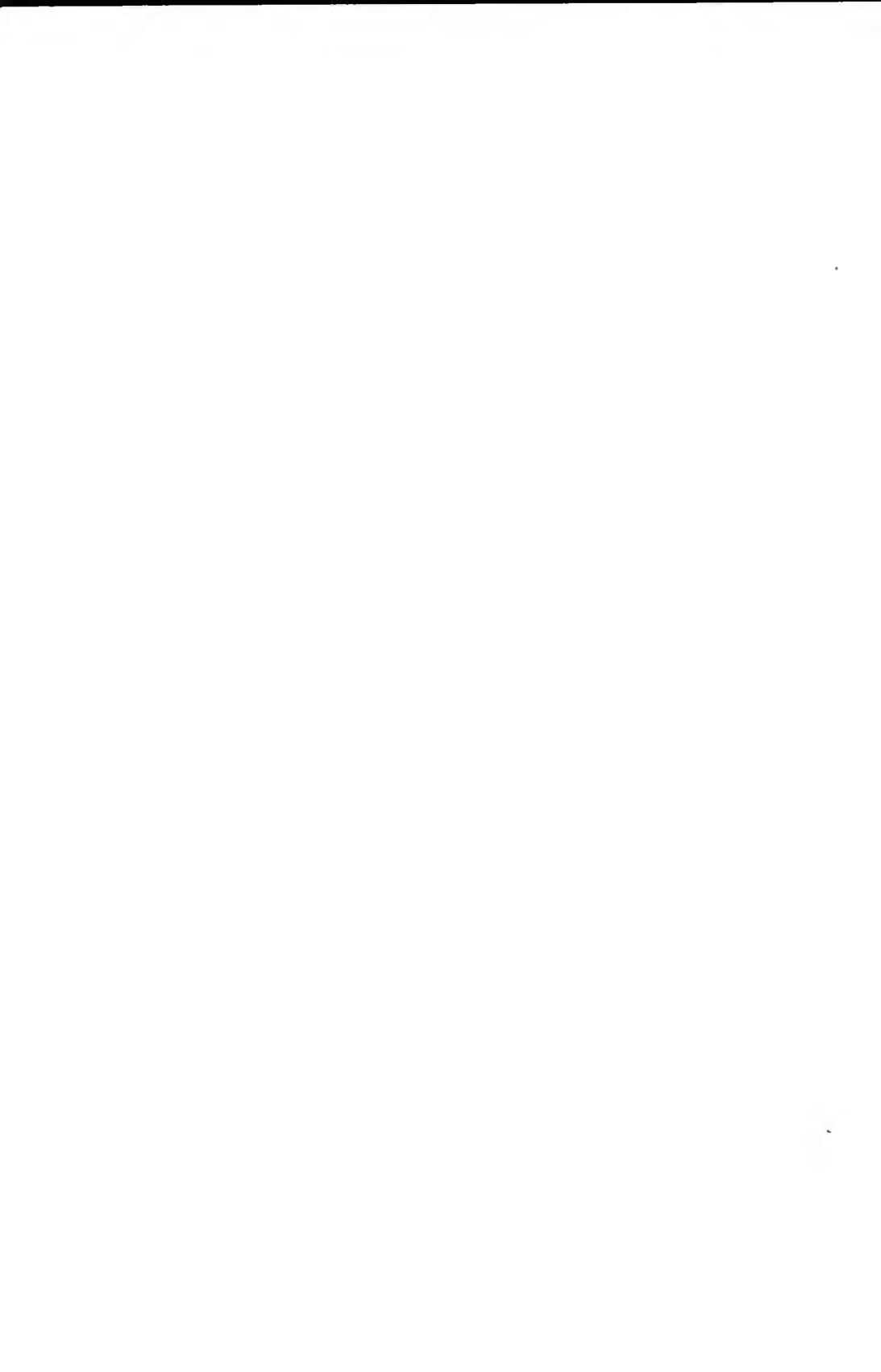
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# CIVIL DIVISION, DEPARTMENT OF JUSTICE, AND THE U.S. FOREIGN CLAIMS SETTLEMENT COMMISSION BUDGET AUTHORIZATIONS

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WEDNESDAY, FEBRUARY 8, 1984

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENTAL RELATIONS,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met at 9:45 a.m., pursuant to call, in room 2237, Rayburn House Office Building, Hon. Sam B. Hall, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Hall and McCollum.

Staff present: William P. Shattuck, counsel; Steve Douglass, assistant counsel; David Karmol, minority counsel; and Florence McGrady, legal assistant.

Mr. HALL. The Subcommittee on Administrative Law and Governmental Relations will come to order.

Today, we have a hearing on the budget authorization for fiscal year 1985 and oversight relating to the Department of Justice, Civil Division, and the Foreign Claims Settlement Commission of the United States.

Our witnesses today will be Mr. Richard Willard, Acting Assistant Attorney General, Civil Division, representing the Department of Justice, and Mr. David H. Rogers, General Counsel for the Foreign Claims Settlement Commission of the United States.

We are happy to have you gentlemen here and if you would proceed, Mr. Willard, with your testimony.

## TESTIMONY OF RICHARD K. WILLARD, ACTING ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. WILLARD. Thank you, Mr. Chairman.

I have a prepared statement which has been furnished to the committee and I would propose to simply summarize the statement orally, if the committee is willing to have it submitted for the record.

Mr. HALL. Are you asking that your submission be made a part of the record?

Mr. WILLARD. Yes, Mr. Chairman.

Mr. HALL. Without objection, it will be made a part of the record. You may proceed.

Mr. WILLARD. Thank you.

I appreciate the opportunity to be here to discuss the work of the Civil Division and our fiscal year 1985 budget request. That budget request is for \$71,289,000 and a total of 852 permanent positions. This represents program increases totaling approximately \$5.8 million and an increase in 67 positions.

The caseload of the Civil Division continues to increase dramatically. Between the end of fiscal year 1982 and the end of fiscal year 1983, our caseload increased by about 29 percent.

We estimate that over the next 2 fiscal years the caseload will increase by a total for that 2-year period of approximately 84 percent.

The amount of claims, which we will be defending, over that same 2-year period, we estimate will increase from what it is now—\$63 billion—to \$123 billion.

The program increases that are included in our fiscal year 1985 budget request break down as follows: for the first, our Commercial Branch, we seek an increase of 40 positions and \$2 million. This is required for several reasons. One is the increasing emphasis on the problems of fraud, waste, and abuse. The Commercial Branch handles civil fraud litigation for the Civil Division. And with the increasing activity in defense contracting, we estimate that there will be increasing litigation over these matters.

In addition, the creation of the Court of Appeals for the Federal Circuit has created new litigation responsibilities for the Civil Division because much litigation that was previously spread around the country is now being centralized in this new court system. And because the courts are headquartered in Washington it falls on the Civil Division to handle the cases rather than asking U.S. attorneys from around the country to fly into Washington to handle these cases.

The second area of program increase we have sought is in our Torts Branch. We have requested an increase of 23 positions and \$1.4 million. The Torts Branch's increasing responsibilities fall particularly in the area of litigation over injury as the result of exposure to hazardous substances. That includes asbestos, radiation, agent orange, and other such matters.

Just this morning, Mr. Chairman, I was addressing a seminar on asbestos which we are having for our attorneys, for assistant U.S. attorneys, and for agency attorneys who are involved in this litigation. It is a 3-day seminar. We have experts coming in from around the country to address our people on the issues involved in this litigation.

We have approximately 2,000 cases now pending in over 30 districts. We estimate that the Government's exposure in the asbestos litigation could run well in excess of \$37 billion.

We think in light of the increased exposure and increased caseload in this area, that the program increase in the torts area is quite modest.

The third area of program increase we have sought is for our appellate staff—four positions and \$246,000. The appellate staff workload increases as everyone else's workload increases because when cases move from the district court level to the court of appeals, naturally we need lawyers to handle those cases there.

We have also sought a program increase of \$1.2 million for automated litigation support. Increasingly, our cases are becoming large and complex. They involve millions of pages of documents. The only way we will ever be able to keep track of those documents and manage the litigation effectively is to rely more and more on automated litigation support—computers. Our budget request includes a program increase in that area.

Finally, there is also a program increase for retention of private counsel in *Bivens*-type cases. This increase is \$394,000 over the last fiscal year level of \$493,000.

One reason why we are predicting a program increase in this area was the recent decision of the D.C. Circuit Court of Appeals in the *Falkowski* case, in which it held that the courts could conduct judicial review of the Government's decision of whether or not to provide private representation in *Bivens* cases.

This has been a thorny problem for us for many years anyway, and it is only made worse by the fact that now we are going to have the courts looking over our shoulder. And if we refuse to provide private counsel for representation for Government employees who are sued in *Bivens* cases, the courts may overturn that decision and require us to do so as a result of the *Falkowski* precedent.

Now, we have, as this committee well knows, Mr. Chairman, supported for some time amendments to the Federal Tort Claims Act that would substitute a cause of action against the Government for *Bivens* cases against individual Government employees.

Passage of those amendments, which we continue to support strongly, would not eliminate the expense that we have for private representation. It would simply shift it from hiring private counsel to the need to provide Government counsel to handle the cases; that is, the cases will not go away; it is simply that they will be litigated in a different manner.

Now, we think that the way in which they would be litigated under our proposed amendments to the Federal Tort Claims Act would be better for all concerned. I simply wanted to point out that enactment of that amendment would not cause any savings, net savings, in the Civil Division budget.

Finally, Mr. Chairman, I would like to mention several program increases that are part of our fiscal year 1984 supplemental budget request.

The first of these is for litigation concerning nuclear powerplants that were planned by the Washington Public Power Supply System, sometimes known by the acronym WPPSS. This entity was created by the State of Washington and endeavored to construct five nuclear powerplants in the Pacific Northwest.

A Federal agency, the Bonneville Power Administration, was involved in backing three of those five plants. The remaining two plants, which the Government agency did not back, were cancelled about 2 years ago. And after a State court ruling in Washington the State agency has now defaulted on the bonds that were issued to back those two plants. The total principal amount of those bonds was \$2 1/4 billion. This was the largest municipal bond default in history.

That default, as well as associated problems with these plants, has engendered a plethora of litigation. We have counted over 70

cases pending in State and Federal courts around the country that have grown out of that problem.

The exposure to the U.S. Government is quite high. It ranges anywhere from, we have estimated \$7 to \$28 billion. The holders of the bonds, for which there has been a default, are suing literally everyone in sight to try to get their money back.

There is a feeling that Uncle Sam represents a tempting target, and we have been sued. We have had administrative tort claims filed against the Government as well as contract litigation in the claims court. We have sought in our supplemental an increase of 33 positions and \$6.7 million.

In addition, we have proposed to create a temporary field office in Portland, Oreg. for a number of our litigators. In January we sent a letter to Chairman Rodino notifying him of our intent to establish this field office.

The reason we think it is a good idea to establish a field office in Portland is that is where the litigation is centered basically. For example, the witnesses, and we estimate, 30 million pages of documents—are all located out in the Pacific Northwest.

We believe it is cost effective to have at least some of our lawyers working on this litigation living and working out there rather than having them flying from Washington to the west coast as frequently as would be required in order to handle this litigation.

Another area for which a supplemental increase has been requested is our immigration litigation. As the committee is aware, the Civil Division last year assumed the responsibility for immigration litigation and established an Office of Immigration Litigation. Fourteen positions in that office which were previously funded by the Immigration and Naturalization Service have now been transferred to our direct budget.

Finally, a modest program increase was sought as a result of the Supreme Court's decision in the *Sells* case, although that raises probably more important questions of policy than of budget.

This Supreme Court decision held that the Federal Rules of Criminal Procedure prohibited the sharing of grand jury information among criminal and civil lawyers involved in fraud litigation.

That decision basically means that if the Civil Division is to bring civil fraud cases in these areas that we may have to engage in expensive and time-consuming duplication of the investigatory effort that took place at the criminal side if we are going to be able to bring a civil fraud case involving the same facts and individuals, if we could even duplicate the investigation without access to the grand jury information.

We think this presents a serious problem for our ability to conduct effective civil fraud litigation in these cases.

Finally, two additional matters I wanted to mention before concluding my introduction, Mr. Chairman.

One has been our litigation of the *General Motors X car* case. This case was referred to us last summer by the Department of Transportation and we have filed a complaint asking General Motors to recall over 1 million X cars sold during the 1980 model year to repair defects which we allege exists in the braking systems of those cars.

This case has been moved on an extremely fast track because of the public safety issues involved. We have a trial scheduled for early March of this year. And I think, Mr. Chairman, that may be a record in moving complex civil litigation rapidly in the space of a few months.

We have had a team of lawyers who have been working literally around the clock to get this case ready for trial. We are prepared to take a very aggressive posture in trying to bring about a recall of these cars so that the safety defects can be corrected.

The final matter I wanted to mention, Mr. Chairman, has been our efforts in the debt collection area. The Civil Division has been designated by the Attorney General to coordinate these efforts. We began keeping accurate records on debt collection for the first time in fiscal year 1982 in which the cash collections totaled approximately \$200 million. For fiscal year 1983, cash collections increased to \$477 million.

I believe that represents an admirable record of protecting the taxpayers' interest in debt recovery through a more aggressive and effective debt collection program coordinated centrally by the Civil Division.

That concludes my opening remarks, Mr. Chairman. I would be pleased to answer any questions you or other members of the committee may have.

[The statement of Mr. Willard and the Civil Division justification follows:]

**STATEMENT**

**OF**

**RICHARD K. WILLARD  
ACTING ASSISTANT ATTORNEY GENERAL  
CIVIL DIVISION**

**BEFORE**

**THE**

**COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS  
HOUSE OF REPRESENTATIVES**

**CONCERNING**

**CIVIL DIVISION AUTHORIZATION**

**ON**

**FEBRUARY 8, 1984**

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to be here this morning to discuss the work of the Civil Division and our 1985 budget request. For 1985, the Division is seeking a budget of \$71,289,000 and 852 permanent positions. Included in this request are program increases of \$5,851,000 and 67 permanent positions.

As the Government's lawyer, the Civil Division plays a pivotal role in protecting the financial status of the Federal Government and the statutory and regulatory integrity of the numerous entitlement and other Federal programs established by Congress. The Division's principal objective is to provide effective representation to its clients, Government agencies and the people of the United States.

In this role, Civil Division attorneys are primarily litigators appearing before the courts on behalf of most Government programs with the exception of those within the responsibility of the Lands, Antitrust and Tax Divisions. The subject matter of our cases is as broad and diverse as the Government itself. We litigate cases involving tort claims, Government contract and other commercial claims, and the interpretation of statutes and regulations in specific Federal programs. Since last year, we have handled civil litigation under the immigration laws, and litigation under many of the consumer protection statutes. Our

work involves cases in the Federal district courts, the Courts of Appeals and specialized courts such as the Court of International Trade and the Claims Court. We also prepare documents for filing by the Solicitor General in the Supreme Court. I personally have handled litigation while serving as the Deputy Assistant Attorney General for the Division's Federal Programs Branch and am familiar with the kinds of pressure faced by our staff attorneys.

From the end of FY 1982 to the end of FY 1983, the caseload of the Civil Division increased by about 29% and, if present trends continue, from the end of FY 1983 to the end FY 1985, we expect the caseload to increase by 84% or more. This expectation represents an increase in pending cases from almost 29,000 at the end of fiscal year 1982 to approximately 68,000 by the end of 1985. At the end of December 1983, we had 35,902 cases pending. The cases pending at the end of 1983 involved claims of \$63 billion and we expect this amount to increase to \$123 billion by 1985. These dollar figures do not include the potential increase of billions of dollars in the cost of Federal entitlement programs which are at issue in many of the cases we are now handling.

Despite these huge increases in the volume of cases which we are handling, the Division has been able to sustain a remarkable

record of success on behalf of its client agencies. For example, in cases involving claims of \$15.1 billion against the Government which were closed during 1983, we were successful in limiting awards to \$127 million -- less than one percent of the amount claimed. Conversely, in our affirmative cases we secured awards of 16.4 percent of the amount we were seeking to recover or \$63.8 million on claims of \$388.4 million. At the same time, we secured favorable judgments and settlements in approximately 88 percent of our non-monetary litigation.

Our ability to sustain this level of success while coping with the increasing volume of complex litigation is largely attributable to the abilities and hard work of our attorneys and support staff. In addition, several management actions have been taken to improve our productivity. Some of the most significant management actions include improvement and expansion of our automated information handling systems; expansion of the Division's automated litigation support programs; utilization of volunteer service by students in working for course credit through on-the-job experience; and the institution of additional training programs for our management staff. Our future success will be strongly influenced by our ability to continue and expand upon these initiatives.

There are several aspects to our request and I would like to briefly discuss each of them.

The major share of the increase is for 67 permanent positions and \$3.6 million for personnel-related expenses. This increase will provide additional staffing for several specific areas of litigation where our caseload has already outstripped available resources and where the largest caseload increases are expected over the next two years.

The largest personnel increase is for our Commercial Litigation Branch. This branch, over the next two years, will continue to experience the largest caseload growth of any part of the Division. The Branch plays an important role in the Administration's campaign against fraud and waste in government programs. Civil fraud cases are referred to the Branch for prosecution. This expansion in caseload is also in part attributable to the Federal Courts Improvement Act of 1982. That Act expanded the original jurisdiction of the Claims Court and created the new Court of Appeals for the Federal Circuit (CAFC), with jurisdiction over certain appeals previously heard in the various U.S. Circuit Courts of Appeals as well as the Court of Customs and Patent Appeals. Moreover, the new CAFC is now the exclusive forum for appeals from the Merit Systems Protection Board. The CAFC also hears all appeals involving non-tort money claims against the United States, as well as the appeal of many trade and customs cases.

Since the Act became effective, on October 1, 1982, the caseload in the Claims Court has increased by almost 40 percent. By 1985, CAFC litigation will involve a new workload of 1,795 cases involving monetary claims against the U.S.

Because the CAFC, like the Claims Court, is centralized in Washington, D.C., our attorneys must personally handle all litigation in the new court. It would not be cost-effective for the U.S. Attorneys to travel outside their assigned districts to handle such cases. Therefore, an increase in personnel resources is necessary for the Division to handle this new caseload. We are seeking for the Commercial Branch an increase of 40 positions and about \$2 million in related funds.

The second largest request for staffing increases is for our Torts Branch. Because of an expansion in governmental tort liability, this branch is now experiencing an accelerated growth in all litigative areas. The rise in litigation is further marked by litigation that is exceedingly complex and technical in nature. The requested attorneys will help deal with the increase in "toxic tort" litigation against the government, as well as the more traditional areas of tort law such as Bivens, aviation, admiralty, personal injury, and employer's

liability. At the end of FY 1982, claims for "toxic torts", other than asbestos, were about \$2 billion. Figures reveal that over the next ten years, "toxic tort" litigation claims, not including asbestos, are conservatively projected to increase to \$200 billion.

Asbestos litigation is on the brink of becoming the largest, single case type in legal history. At the end of 1983, the Torts Branch was defending over 1,700 asbestos cases. By 1985, the caseload is projected to reach almost 10,000 cases involving claims of approximately \$42 billion. This litigation is also very complex and technical in nature and requires a high level of expertise to defend properly.

Given the unprecedented growth in tort litigation and the amount of dollars at issue, the Civil Division's request is modest. We are seeking for the Torts Branch an increase of 23 positions and approximately \$1.4 million in related funds.

Finally, we are seeking a staffing increase for our Appellate Staff. It is inevitable that the increasing volume of general civil cases being handled by the Department expands the caseload of the Appellate Staff. Because of the increase in immigration litigation, the Office of Immigration Litigation will continue to generate unusually high levels of appellate

litigation. The Appellate Staff's Supreme Court cases and their Court of Appeals cases, are projected to be higher by 32 percent and 19 percent, respectively, in 1985 than in 1983. The personnel increases we are seeking will enable our Appellate Staff to maintain its high level of achievement in protecting the Government's interest at all levels of appeal. In order to maintain these objectives in 1985, we are seeking for the Appellate Staff an increase of 4 positions and \$246,000 in related expenses.

The second critical element of our requested program increase is for \$1.2 million for automated litigation support services. The Division has embarked on a major effort to implement a comprehensive program to aid our attorneys in acquiring, storing, retrieving and analyzing massive volumes of documentary evidence relating to the cases they are litigating. Although the services available to our attorneys vary, the focus of litigation support is on the use of micrographics, automated data bases, and communication networks to enhance attorney litigation information management capabilities. Such support is demanded by the increasing complexities of our litigation. We must continue to broaden our use of the invaluable resource of automated litigation support.

The requested increase for litigation support will permit the Commercial Branch to take advantage and make use of all the

automated data bases established by the Division. More specifically, the increase will allow the Commercial Branch to secure these services for at least 53 major cases ranging from corporate/commercial debt recovery and intellectual property to civil fraud and employment-related claims. A special repository will also be established for the voluminous evidentiary documents collectively involved in the corporate/commercial debt recovery program. This central repository will make possible the simultaneous use of evidence by our attorneys working at numerous locations, will greatly reduce the amount of time and the costs needed to respond to discovery requests, and will eliminate duplication of storage and copying requirements.

The third element of our requested program increase is \$394,000 for private counsel involving the so-called Bivens actions. Suits against present and former Federal employees for money damages as a result of official governmental conduct continue to be filed at an alarming rate. At the close of 1983, the total number of pending Bivens suits was 1,079. By 1985, Bivens actions are projected to increase to 1,687 -- an estimated increase of 56 percent over the 1983 level. The Civil Division is responsible for authorizing and effecting representation in the majority of these cases. Real and potential conflicts arise among defendants and, sometimes, between

defendants and the United States and the representation by private attorneys is necessary. The United States Court of Appeals for the D.C. Circuit recently held that courts are entitled to review any decision by the government not to provide counsel to individual defendants. Falkowski v. EEOC, No. 82-1446 (decided Oct. 14, 1983). This decision may cause the Division to have to employ private counsel in more cases. The increased funding requested to employ private counsel for individual defendants would do much to alleviate these problems by permitting greater flexibility in resorting to private attorneys when real or potential conflicts threaten. Moreover, this increase will permit the Division to respond more effectively to the critical problem of Government officials being personally sued.

The Division still supports enactment of proposed amendments to the Federal Tort Claims Act, which would waive sovereign immunity for constitutional violations and make suit under the Act the exclusive remedy for citizens injured by the actions of Federal officials. The goal of all involved in this legislative endeavor is to provide a viable, financially responsible defendant -- the United States -- so that those citizens who were injured could recover. In addition, suit against the United States would be an exclusive remedy, thereby protecting Federal employees from the burdens of litigation and the fear of

adverse judgments. We continue to believe, however, that such legislation should include the qualified immunity defense, giving the government the opportunity to argue the reasonableness of the agent's conduct.

As for the budgetary impact of such legislation, the substitution of the United States for Federal officials sued in their individual capacities would terminate the Department's need to employ private counsel to represent individual defendants in cases where Departmental representation would involve an actual or apparent conflict of interest. Enactment of such legislation, while reducing the Federal representation costs for private counsel, would, at the same time, increase the workload of Division attorneys who would assume responsibility for the current private counsel burden.

Amending the Federal Tort Claims Act, as I just described, is a high priority of the Civil Division. However, until the passage of such amendments, the Division will require the necessary funds to employ private counsel in Bivens actions when real or potential conflicts of interest arise.

Finally, program increases are being sought for reporter services, transcripts and consultation fees for both the Commercial and Torts Branches. These increases involve \$350,000

for reporter services and transcripts and \$178,000 for litigation consultants. The request for these services is needed to meet the previously noted growth in cases, claimants and witnesses to be deposed, as well as the enhanced complexity of the issues being litigated.

The Civil Division's budget request, as I have just outlined for the Subcommittee, was developed in the context of a long-range strategy to enable the Division to litigate effectively and accomplish its major objective despite its rapidly increasing caseload. This funding increase will enable the Division to continue to provide effective representation to its client agencies and to protect the Federal Treasury.

In addition to our FY 1985 request, I would like now to discuss some of the critical legal issues we face today, and which are the subject of a FY 1984 budget supplemental currently pending in Congress.

The first issue concerns the problems faced by the Washington Public Power Supply System (WPPSS). On July 22, 1983, WPPSS announced it could not pay back \$2.25 billion in bonds it issued to finance the construction of two nuclear power plants in the Pacific Northwest. Already over 70 lawsuits have been filed in state and Federal courts. The Civil Division is

involved in the litigation primarily on behalf of the Bonneville Power Administration (BPA). For the most part, the litigation is being brought by bondholders and the public utilities that are participants in WPPSS projects in an effort to relieve themselves of some, or all, of their fiscal liability. Lawsuits arising from the WPPSS controversy are expected to stretch out over the foreseeable future. The potential liability of the United States Government ranges from \$7 billion to \$28 billion.

The WPPSS default has presented the Civil Division with an almost unprecedented challenge. This litigation is characterized by complex and fact-intensive issues involving many parties, many districts, and millions of pages of documentary evidence. The legal issues in the litigation will not be resolved quickly. To meet this challenge, a 1984 supplemental request was included in the President's budget. This supplemental request seeks 33 additional full-time positions and \$6.7 million. The supplemental funding will provide the Division with the necessary resources to protect the United States' interest in the WPPSS bond default litigation. Moreover, part of these resources will be used to establish a temporary field office in Portland, Oregon. Formal notice of our intent to establish this office was sent to Chairman Rodino on January 17, 1984.

The second issue which I would like to discuss concerns the Division's continuing responsibility for immigration litigation. Last year Assistant Attorney General J. Paul McGrath appeared before this Subcommittee to testify about our newly acquired responsibility for protecting the United States in Federal civil litigation challenging the Government's programs, policies and initiatives under the immigration and naturalization laws. As you are aware, it is one of this Administration's high priorities to better control illegal immigration, and the Division in 1983 assumed this additional duty. The Division subsequently responded by establishing the Office of Immigration Litigation to consolidate the civil immigration litigation responsibilities into one centralized and specialized component within the Department. Our objective in enforcing the Government's immigration and naturalization laws has been to conduct promptly and efficiently the relatively large amount of litigation ranging from the routine to the moderately complex and to maintain the capacity to respond to major litigation with experienced litigators.

In order to achieve this objective, resources were secured through various components of the Department that handled immigration issues. Congress approved the reprogramming of 16 positions and related funding. In addition, the Immigration and Naturalization Service (I&NS) provided funding for 14 positions

and allowed 4 of its own trial attorneys to participate on a revolving detail to the office. In 1984, however, the positions will be funded directly. The immigration caseload has expanded beyond our initial expectations. The largest growth has been in the area of habeas corpus and deportation review petitions where the office is receiving over 500 such petitions a year. Based on the history of such petitions before establishment of the office, we had expected to receive only 225 per year. Included in these review petitions are political asylum cases which require a greater amount of attorney time because of the sensitive foreign policy issues involved. Therefore, in order for the Division to continue its efforts to enforce the immigration and naturalization laws, a supplemental appropriation to provide 1984 funding for the 14 positions was included in the President's budget. The approval of such funding will enable the Division to maintain its centralized control over the litigation and personally handle many of the cases. It will also permit us to continue to develop a cadre of attorneys with specialized knowledge and skills in handling this type of litigation.

The third issue I would like to discuss concerns the U.S. Supreme Court's recent ruling in United States v. Sells Engineering, Inc., \_\_\_ U.S. \_\_\_, 103 S. Ct. 3133 (1983), where the Supreme Court held that Justice Department Civil

Division attorneys cannot obtain automatic disclosure of grand jury materials for use in civil suits. Naturally, the restrictions on acquiring grand jury transcripts in civil cases will have an adverse budgetary impact on the litigation conducted by the Division's Commercial Branch. For example, we will be forced to entirely duplicate a three-year investigation of thousands of fictitious bids for oil leases involving hundreds of leasehold and royalty interests; a \$2.7 million Anti-Kickback Act investigation lasting two years to trace illicit corporate payments through bank accounts in Switzerland and other countries; a \$5 million contract fraud investigation which lasted 2 to 3 years and in which the documents are so voluminous that an aircraft hangar was required for storage; a \$2 to \$2.5 million fraud involving hundreds of Housing and Urban Development-insured mortgages and several corporate shells; and an investigation concerning bribery of officials of an oil company owned by a foreign government.

As a result, a supplemental appropriation to provide 1984 funding for \$314,000 to meet additional costs incurred due to the lack of access to grand jury material has also been included in the President's budget.

Finally, I would like to review two areas of our activity which do not directly relate to our budget request.

The first involves our recent case under the National Transportation Safety Act. On August 2, 1983, we filed suit against General Motors Corporation under the National Traffic and Motor Vehicle Safety Act, seeking the recall of 1.1 million automobiles, known as "X" cars, and the imposition of \$4,027,000 in civil penalties. We allege that General Motors began production of the "X" car in 1979 even though it was fully aware that the brake system was defective and that during the course of NHTSA's investigation of the defect, General Motors intentionally made numerous false statements in an effort to cover up the extent of the defect. This case is being handled in our Federal Programs Branch.

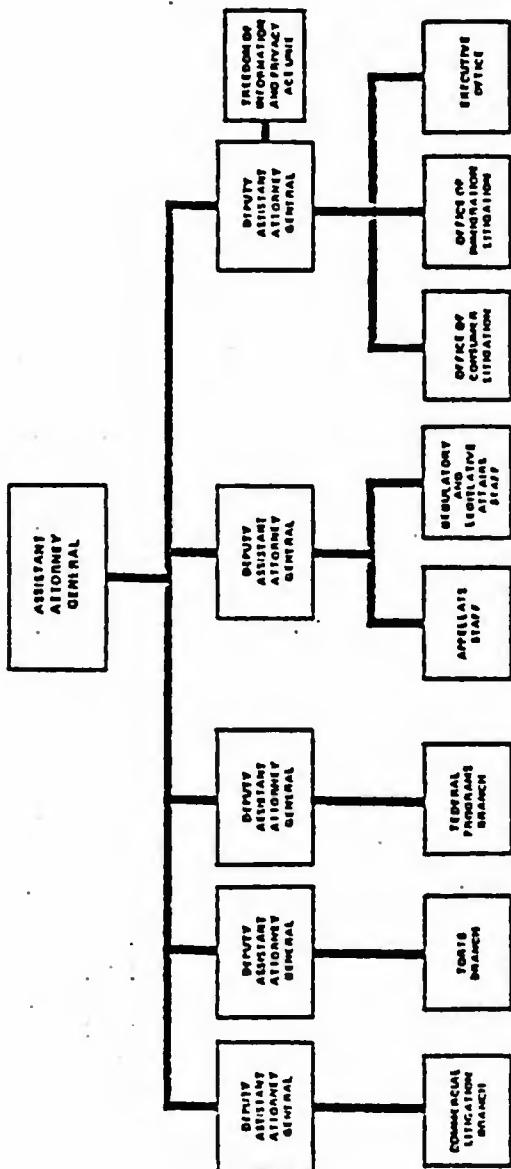
The final area I would like to report on concerns the current status of the Civil Division's debt collection activities. As you are aware, the Administration and the Attorney General have assigned great importance to the task of collecting debts owed to the United States as a result of defaulted loans, settlements or judgments, and other court imposed obligations. The Attorney General has given this office the lead role for the Department of Justice on all collection matters.

In responding to this role, the Department has implemented a debt collection plan which establishes the goals, accomplish-

ments, and priorities for the Department's debt collection activities. This plan, which originated in 1982, is revised on a yearly basis. As part of the plan, the Department created a Debt Collection Team to coordinate and consolidate debt collection activities, with the goal of eradicating outstanding liabilities owed to the Government. Among the team's current goals are centralizing all Department debt collection policies into one reference manual, replacing the divergent docket and reporting systems used by the 94 U.S. Attorneys' Offices with one management information system, and preparing for the establishment of a direct deposit or lock box system which will expedite the flow of collections to the Treasury by weeks. Through these efforts, the total amount of cash collected in 1982 was \$200 million. In 1983, we doubled this amount by collecting over \$477 million.

Mr. Chairman, I would be happy to answer any questions or respond to any comments you or the members of the Subcommittee may have.

## CIVIL DIVISION



  
 Donald C. Stumpf  
 DEPUTY ATTORNEY GENERAL  
 Civil Division  
 Appendix 11/83  
 Dated 11/13/83

Donald C. Stumpf  
 DEPUTY ATTORNEY GENERAL  
 Civil Division

**Civil Division**  
Salaries and expenses General Legal Activities  
Cross-Total of Four Branches  
 (Millions in thousands)

Activity/Program	1948 President's Budget Request						1948 Appropriation					
	1948 Appropriation			1948 Request			Reappropriation			Program Requested		
	Fees.	W.	Ant.	Fees.	W.	Ant.	Fees.	W.	Ant.	Fees.	W.	Ant.
Federal Associate Activity....	60	66	\$1,019	***	***	-4145	***	***	***	531	\$91	60
Torts Litigation.....	177	192	22,564	***	***	-571	***	***	***	337	226	177
Commercial Litigation.....	205	208	12,104	***	***	-5117	***	***	***	496	181	205
Federal Programs.....	139	145	1,553	***	***	-3645	***	***	***	25	6,829	172
Consumer Litigation.....	35	37	1,568	***	***	-467	***	***	***	13	23	45
Immigration Litigation.....	16	16	915	***	***	-38	***	***	***	14	14	15
Transportation Administration.....	106	107	4,551	***	***	-106	***	***	***	1,607	45	30
Total.....	731	751	51,054	***	***	-2,308	***	***	***	68	61	106
										9,411	905	107

Distribution of Analysis of Changes from 1948 Appropriation Request

Congressional Appropriation Actions

The Congress reduced the General Legal Activities appropriation request for 1948 by \$8,200,000 because of its decision to allow only a seven percent increase in Standard Level User Charges and to impose a one percent reduction to the appropriation. The Civil Division's share of these reductions is \$2,300,000. In lieu of enacting a private relief bill, the Congress also increased a requirement that \$50,000 be set aside to pay legal fees of private litigants in the case of New Mexico ex rel. Reynolds v. Amoco. No corresponding increase was provided in the amount appropriated. This requirement will be absorbed by the Civil Division against available litigation support funding.

Supplements Requested

1. The pay request provides \$505,000 to meet increased pay requirements (Executive Order 12561).
2. The Plaintiff is requesting \$2,188,000 for increased litigation expenses, primarily in response to the flight to Financial Privacy Act and U.S. Supreme Court decision in Sells Engineering, to hold the difference between a seven percent rate increase in splice charges and the amount allowed under the original appropriation act, and to rectify the shortfall in needed litigation support funding. The Civil Division's share of this request is \$1,117,000.
3. The Plaintiff is requesting \$8,294,000 to provide the necessary resources for the Federal Programs Branch of the Civil Division to protect the United States' interests in the Washington halls User Supply System default litigation and the increased efforts of the Office of Immigration Litigation to enforce the Government's immigration and naturalization laws.

Civil Aviation  
Salaries and expenses. General Legal Activities  
Summary of Requirements  
(Dollars in thousands)

Adjustments to base:					Per Capita Work Per. Pos. Years Amount
1968 as enacted.....	....	738	761	\$51,354	....
Supplements requested:					
1968 Pay supplemental, requested.....		47	52	9,411	
1968 Program supplemental, requested.....		785	800	11,770	
1968 Appropriation anticipated.....		...	...	-220	
Changes resulting from management initiatives.....		...	8	4,384	
Inconceivable increases.....		...	...	-165	
Increases.....		785	785	75,438	
1965 base.....		785	785	75,438	

Estimates by budget activity	1968 Actual			1968 Anticipated			1965 Base			1965 Estimate			Increase/Decrease		
	Per Capita	WY	Amount	Per Capita	WY	Amount	Per Capita	WY	Amount	Per Capita	WY	Amount			
1. Claims, customs, and general civil matters..	687	690	\$36,969	785	800	\$61,670	785	800	\$65,138	852	858	\$71,289	67	50	\$5,151

Civil Aviation  
Salaries and expenses, general legal activities

	<u>Summary of Adjustments to Base</u> (Dollars in thousands)	Per. Per. Year	Work Years	Amount
19th & corrected.....		738	761	\$51,354
Supplements requested:				
Pay increase supplemental requested:				
Increased pay costs.....				
Retirement Contributions - Social Security (PRCA).....	1			
Retirement Contributions (PRCA) - New Employees.....	37			
Health care costs.....	14			
Arbitrator's award.....	59			
Net pay supplemental.....		***		905
Pay supplement and requested:				
Washington Public Power Supply (WPPS) litigation.....		33	25	6,709
Implementation 111 Litigation.....		14	14	1,895
Increased litigation expenses.....		***		1,117
19th appropriation anticipated.....		785		
Adjustment to base:				
Surplus resulting from management initiatives:				
Reduction of 03-11 to 03-15 positions.....		***		-98
Reduction of printing facilities.....		***		-122
Uncontrollable increases:				
One additional compensable day.....		***		134
Amortization of 03/4 pay increases.....		***		358
Amortization of Retirement Contributions - PRCA New employees.....		***		12
Amortization of Medicare costs.....		***		5
Amortization of 8 additional positions approved in 19th.....		8		291
Mid-grade increases.....		***		395
Health Benefits costs.....		***		66
Federal Employees Compensation Act (FECA) - Employment Benefits.....		***		13
Standard level wage changes (SLC).....		***		1,377
GSA recruiting/relocatable services.....		***		92
Postural Telecommunications System (PTS).....		***		68
GPO telecommuting costs.....		***		7
Full-titled investigations.....		***		5
Additional legal research and litigation support services.....		***		410
Employee data and control services.....		***		18
Overtime pricing level adjustment.....		***		1,095
Paragon allowances.....		***		2
Private counsel.....		***		105
Paragon counsel.....		***		35
Total, uncontrollable increases.....		***		8
Decreases:				
Nonrecurring costs for 19th supplemental.....				
19th prior.....		785	ROR	\$50
				65,438

Salvaging and repairing, General [1901] 601-6149  
Department of Agriculture by [signature]  
Post Office Department

Civil DivisionSalaries and expenses, General Legal ActivitiesJustification of Program and PerformanceActivity Resource Summary  
(Dollars in thousands)

Activity:	1984 Appropriation Anticipated			1985 Funds Received			1985 Expenditure			Increase/Decrease Funds Received W/		
	Ferm.	W/	Amount	Ferm.	W/	Amount	Ferm.	W/	Amount	Ferm.	W/	Percent
Political Appellate activity.....	60	66	\$1,116	60	66	\$1,616	64	69	\$1,810	4	3	+47%
Torts litigation.....	177	182	22,131	177	182	23,982	206	199	25,639	23	17	+2,05%
Commercial litigation.....	205	208	12,264	205	208	11,061	205	234	16,566	40	30	+3,50%
Federal Programs.....	172	170	15,243	172	178	16,098	172	174	16,098	***	***	***
Consumer Litigation.....	35	37	1,650	35	37	1,638	35	37	1,638	***	***	***
Immigration Litigation.....	30	40	2,420	30	2,650	30	30	2,654	***	***	***	
Partnership and Administration.....	106	107	8,115	106	107	8,111	106	107	8,109	***	***	***
Total,.....	745	745	61,676	745	745	71,385	742	742	71,385	-3	-3	-1%

This activity provides for representation of the interests of the United States in all types of civil cases and matters except those within the specialized fields of the other Divisions of the Department. The litigation encompasses the full spectrum of legal problems encountered by private business enterprises because the departments and agencies of the Government are engaged in innumerable commercial ventures similar to those of a mode m corporation, such as building, selling, construction, shipping, production of energy, insurance, housing and banking. In addition, the Division litigates the significant policy issues, often rising to constitutional dimension, associated with Government activities. Hence, the overall objective of Civil Division activity is to provide the Government with the best possible legal representation. While the Division operates as the Government's law firm, it also functions as a counselor and advisor for important Government programs that may come into litigation.

<u>Salaries and expenses, General Legal Activities</u>	
	<u>Summary of Resources by Program</u>
	\$1,120,000 (\$1,120,000)

Estimated by Program										1983 Actual										1983 as Forecasted									
1983 Appropriation					Anticipated					1985 Rate					1985 Estimate					Increase/Decrease									
Term.	Per.	Pos.	Wt.	Amount	Term.	Per.	Pos.	Wt.	Amount	Term.	Per.	Pos.	Wt.	Amount	Term.	Per.	Pos.	Wt.	Amount	Term.	Per.	Pos.	Wt.	Amount					
Federal Appellate activity					60	67	32	13	60	66	33	61	6	61	69	33	890	4	4776										
Federal Litigation					177	216	15	50	177	182	22	13	177	182	23	582	200	25	631	23	17	2,052							
Commercial Litigation					205	210	7	342	205	208	12	266	205	216	12	266	208	216	566	215	16	556	40	30	3,505				
Federal Programs					139	147	7	342	139	147	7	314	172	15	243	172	178	16	398	172	174	167	174	174	174	174	174	174	
General Litigation					12	12	R	137	12	12	8	439	35	37	1,569	35	37	1,639	35	37	1,639	30	30	2,684	30	30	1,639	30	
Immigration Litigation					94	104	3	320	94	104	3	362	106	107	4	515	106	107	4	781	106	107	4	779	106	107	4	779	
Management and Administration					357	357	3	377	357	357	3	394	357	357	3	394	357	357	3	394	357	357	3	394	357	357	3	394	
Total					357	357	3	377	357	357	3	394	357	357	3	394	357	357	3	394	357	357	3	394	357	357	3	394	

Civil Division

Salaries and expenses, General Legal Activities

Justification of Program and Performance

Activity Resource Summary  
(Dollars in thousands)

Activity:	1985 Appropriation Actual			1985 Forecast			1985 Estimate			Increase/Decrease		
	Term. Pos.	Yr. Amount	Term. Pos.	Yr. Amount	Term. Pos.	Yr. Amount	Term. Pos.	Yr. Amount	Term. Pos.	Yr. Amount	Term. Pos.	Yr. Amount
Federal Appellate activity.....	60	66	35,116	60	66	32,513	64	69	32,800	4	3	4,276
Torts litigation.....	177	182	22,134	177	182	22,540	204	204	22,574	23	17	2,052
Commercial litigation.....	205	208	12,264	205	208	13,061	215	218	16,566	40	30	3,905
Federal Programs.....	172	176	15,263	172	176	16,088	172	176	16,098	...	...	...
Consumer Litigation.....	35	37	1,569	35	37	1,639	35	37	1,638	...	...	...
Immigration Litigation.....	30	30	2,520	30	30	2,664	30	30	2,664	...	...	...
Management and Administration.....	106	107	4,515	106	107	4,781	106	107	4,709	18	18	18
Total.....	775	806	67,676	775	806	75,738	822	857	77,386	67	50	5,751

This activity provides for representation of the interests of the United States in all types of civil cases and matters except those within the specialized fields of the other Divisions of the Department. The litigation encompasses the full spectrum of legal problems encountered by private business enterprises because the departments and agencies of the Government are engaged in innumerable commercial ventures similar to those of a modern corporation, such as buying, selling, construction, shipping, production of energy, insurance, housing and banking. In addition, the Division handles the significant policy issues often rising to constitutional dimension, necessitated with Government activities. Hence, the overall objective of Civil Division activity is to provide the Government with the best possible legal representation. While the Division operates as the Government's law firm, it also functions as a counselor and advisor for important Government programs that may come into litigation.

	1948 Appropriation Anticipated			1948 Rate			1945 Fatigues			Increase/Decrease Term.		
	Per. Pos.	W.	Amount	Per. Pos.	W.	Amount	Per. Pos.	W.	Amount	Per. Pos.	W.	Amount
Federal Appellate Activity.....	60	66	\$3,416	60	66	\$3,614	61	60	\$3,800	4	3	476

Litigation Goal: "To protect the interests of the United States by successfully defending against appeals seeking the reversal of appellate court and agency decisions favorable to the Government, securing the reversal of appellate court or agency decisions against the Government, and preparing documents for filing in the Supreme Court."

#### Policy Objectives:

To prevail in appellate litigation challenging trial court or administrative decisions in favor of the United States.  
To initiate and prevail in appeals in which the Government's opponents were successful at the trial court or administrative levels.

To protect the Government's interest at the highest level of appeal by preparing documents to be filed by the Solicitor General in the Supreme Court.

Task Program Description: The litigation handled by the Appellate Staff involves all civil appellate cases and interim developing from the litigation of the Civil Division in lower courts and in civil agencies of the United States Government, Members of Congress, Cabinet members, and other Federal executives acting in their official capacities.

Continued caseload growth has reinforced the practice of recent years to assign a limited percentage of court of appeals cases (19 percent) to Appellate Staff attorneys. The remaining caseload (81 percent) is assigned as supervised matters to U.S. Attorneys (62 percent), to trial attorneys elsewhere in the Civil Division (9 percent), or to the trial attorneys in the Client Agencies (10 percent). Cases retained by the Appellate Staff are handled by a staff attorney and a supervisory attorney. Staff attorneys devote 95 percent of their litigation time to personally handled cases and assignments, and the remaining 5 percent to supervised cases. Supervisory attorneys spend 15 percent of their litigation time on supervised cases, and the remaining 85 percent on review of personally handled cases and memanda. In the supervised cases, the Appellate Staff monitors the cases and provides assistance and review, as needed, to U.S. Attorneys, Civilian trial attorneys, and client Agency attorneys. Criteria used for retention of cases by the Staff includes certiorari caliber cases and cases involving constitutional issues, large sums of money, important Federal importance, new statutory provisions, involvement of several litigants, or significant issues calling for specialized knowledge or draft materials for filing in the Supreme Court cases have been personally handled by the Appellate Staff attorneys.

Accomplishments and Workload: Quantitative measurements for the Federal Appellate staff are presented in the following tables:

Supreme Court	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
Personally Handled Cases				
Pending -- start-of-year	154	175	207	187
Received	322	294	302	369
Terminated	301	262	322	322
Pending -- end-of-year	175	207	187	254
Assigned Cases	...	...	50	...
Received	...	...	50	...
Terminated	...	...	...	...
Personally Handled Certiorari				
Memoranda	85	146	115	161
Pending -- start-of-year	202	270	124	354
Received	241	301	278	321
Terminated	146	115	161	194
Pending -- end-of-year	...	...	...	...
Assigned Certiorari Memoranda	...	...	...	...
Received	...	...	...	...
Terminated	...	...	...	...
Performance Measures				
Percent of Decisions	N/A	82%	82%	82%
Favorable (Cases)	N/A	90%	90%	90%
Percent of Decisions				
Favorable (Memoranda)	N/A			

		1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<b>Appeals to U.S. Courts of Appeals and to State Courts of Appeals</b>					
Pending -- start-of-year Received	783	832	1,002	1,152	
Terminated Pending -- end-of-year	391	414	473	493	
Pending -- end-of-year Received	262	244	323	344	
Supervised Cases Handled -- start-of-year Received	832	1,002	1,152	1,301	
Handled -- start-of-year Received	2,499	3,046	3,798	3,775	
Handled -- start-of-year Received	1,668	1,767	1,972	2,102	
Handled -- start-of-year Received	1,119	1,025	1,187	1,249	
Handled -- start-of-year Received	3,048	3,790	3,575	4,420	
Pending -- end-of-year Received - handled United Kingdom	***	***	1,868	***	
Terminated Pending - handled United Kingdom	***	***	1,048	***	
Appeal Memoranda - Personally Handled Pending - start-of-year Received	142	431	610	520	
Terminated Pending - start-of-year Received	922	819	612	1,259	
Pending - end-of-year Received	833	640	702	961	
Appeal Memoranda - Handled Received	431	610	520	818	
Terminated Received	***	***	495	***	
Terminated Received	***	***	495	***	
<b>Performance Measures</b>					
Percent of Decisions Favorable (Personally Handled Cases)					
Favorable (Personally Handled Cases)	83%	84%	84%	84%	
Percent of Decisions Favorable (Supervised Cases)	79%	82%	82%	82%	

During the past year, the appellate staff handled a variety of litigation of national significance. The appellate staff has been able to maintain a remarkable rate of success in winning approximately 82 percent of its cases in the face of a most demanding range of mounting complexity.

Recently the appellate staff filed statements of interest in various courts in support of the Department's position that there is continued bankruptcy jurisdiction in the district courts in the aftermath of the Supreme Court's decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co. This decision invalidated the disallowance of Article 111 judicial power in bankruptcy courts which was contained in section 24(a) of the 1978 Bankruptcy Reform Act. While the Department holds that the emergency rules governing bankruptcy proceedings which were adopted by the district courts at the direction of the Judicial Councils of the Circuit is are constitutional, the lower courts have been sharply divided on the issue. On February 28, 1983, the Fifth Circuit became the first court of appeals to rule on the issue, holding in Braniff Airways, Inc., that bankruptcy jurisdiction remains in the district courts under 28 U.S.C. 1411(a) and that, enacted by the 1978 Bankruptcy Reform Act, or alternatively, under 28 U.S.C. 1334, until April 1, 1984. The court affirmed the district court's holding that the emergency rules providing for limited transfer of the district court's jurisdiction to bankruptcy courts were valid. The Sixth Circuit, in a well-reasoned decision, agreed with the Fifth Circuit. The appellate staff recently filed a statement of interest in the Second Circuit in Karen Corporation. In addition, the Eighth Circuit in Orville Hissman, has followed involving the John-Maville bankruptcy proceedings. Finally, in the Braniff case, American Airlines filed a petition for certiorari in the Supreme Court, and the appellate staff prepared a draft amicus brief for filing in the Supreme Court. The Supreme Court denied certiorari in May, 1983. The appellate staff's efforts in these proceedings have made it possible for a viable bankruptcy system to continue pending Congressional action on the Bankruptcy Act.

In Johns-Maville Sales Corp., v. United States, a manufacturer of asbestos products, one sued in California state courts by workers many of whom employed at the Long Beach Naval Shipyard, who asserted that their asbestos-related disease was caused by Maville's negligence. Maville then sued the Joint Statute in federal district court for indemnity, arguing that the United States which operated the naval shipyard, was a joint tort-feaser. Maville attempted to sidestep the administrative claim requirement by arguing that its case was in the nature of third party complaint. The United States asserted that filing the administrative claim was an absolute jurisdictional prerequisite to suit. After the district court dismissed Maville's suit, the Ninth Circuit affirmed, holding Maville had filed an original complaint in Federal court and was bound by the administrative claim requirement, and absolute jurisdictional prerequisites to suit. If judgment had been entered against the Government, liability could have exceeded \$100 million.

In 1976, Congress enacted the first major revisions of the Copyright Act in almost seventy years. An important aspect of this Act, as amended, is the dramatic expansion of the "compulsory license" concept which had applied to the record industry since 1909. The compulsory license allows performance of copyrighted work without infringement if the copyright owner pays a compulsory license fee. Congress established a new agency in the legislative branch, the Copyright Royalty Tribunal, to set the fees which are to be paid by the users and for the Jukebox and cable fee collections, to distribute the fees among competing claims of copyright owners. Thus far, every Tribunal decision has resulted in a lawsuit to set it aside. The cases arising from the Tribunal decisions are heard initially in an appeals level court. Defense of the cases is also made particularly time-consuming because of the voluminous administrative records that are involved. Nevertheless, the appellate staff has been very successful in sustaining the Tribunal's decisions and in persuading the courts to constrain their role quite narrowly. If the new rates are sustained, approximately \$5 to \$60 million will be in issue in 1984. While these cases do not involve payment of Federal Government monies, the large sums at stake make them particularly sensitive and important to the public in general, and they call for very careful and thorough handling by the appellate staff.

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<u>Personally Handled Cases</u>				
Pending -- start-of-year	703	832	1,002	1,152
Received	391	414	473	493
Terminated	262	244	323	344
Pending -- end-of-year	632	1,002	1,152	1,301
<u>Supervised Cases</u>				
Pending -- start-of-year	2,499	3,048	3,790	3,575
Received	1,668	1,762	927	2,102
Terminated	1,119	1,025	1,187	1,249
Pending -- end-of-year	3,048	3,190	3,575	4,428
<u>Cases - Blanket Disbursed</u>				
Received	...	...	1,048	...
Terminated	...	...	...	...
<u>Annual Memoranda - Personally</u>				
Handled	342	431	610	520
Pending -- start-of-year	922	819	612	1,259
Received	633	640	702	961
Terminated	431	610	520	618
Pending -- end-of-year	...	...	495	...
<u>Annual Memoranda - Assigned</u>				
Received	...	...	495	...
Terminated	...	...	...	...
<u>Performance Measures</u>				
Percent of Decisions Favorable (Personally Handled Cases)	83%	84%	84%	84%
Percent of Decisions Favorable (Supervised Cases)	79%	82%	82%	82%

During this past year, the appellate staff handled a variety of litigation of national significance. The appellate staff has been able to maintain a remarkable rate of success in winning approximately 82 percent of its cases in the face of a burgeoning caseload of mounting complexity.

Recently the appellate staff filed Statements of Interest in support of the Department's decision that there is no continuing bankruptcy jurisdiction in the district courts in the aftermath of the Supreme Court's decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co. This decision invalidated the delegation of Article III judicial power to bankruptcy courts which was contained in section 241(l) of the 1978 Bankruptcy Reform Act. The department holds that the emergency rules governing bankruptcy procedures which were adopted by the district courts at the direction of the Judicial Councils of the Circuits are unconstitutional. The lower courts have been sharply divided on this issue. The First Circuit became the first court of appeals to rule on the issue, holding in Marathon Airways, Inc., that bankruptcy jurisdiction remains in the district courts under 28 U.S.C. 1471(a) and (b), unenacted by the 1978 Bankruptcy Reform Act, or alternatively, under 28 U.S.C. 1334, until April 1, 1984. The court affirmed the district court's holding that the emergency rules providing for a limited transfer of the district court's jurisdiction to bankruptcy courts were valid. The Sixth Circuit, in a well-reasoned decision, agreed with the Fifth Circuit. The appellate staff recently filed a Statement of Interest in the Second Circuit in Keene Corporation v. Johnson-Menville bankruptcy proceedings. In addition the Eighth Circuit in Orville Janssen, has followed the lead of the First Circuit in involving the Johnson-Menville bankruptcy proceedings. Finally, the appellate staff prepared a brief for filing in the Supreme Court. The Supreme Court denied certiorari in May 1983. The appellate staff's efforts in these proceedings have made it possible for a viable bankruptcy system to continue to function pending Congressional action on the Bankruptcy Act.

John-Manville Sales Corp. v. United States, a manufacturer of asbestos products, was sued in California state court by workers, many of whom employed at the Long Beach Naval Shipyard, who asserted that their asbestos-related illnesses were caused by Manville's negligence. The United States then sued the United States in Federal District Court for indemnity, arguing that the United States which operated the naval shipyard was a joint tort-feasor. Manville attempted to sidebar the administrative claim requirement, by arguing that its case was in the nature of a third party complaint. The United States asserted that filing the administrative claim was an absolute prerequisite to suit. After the district court dismissed Manville's suit, the Ninth Circuit affirmed, holding Manville filed an original complaint in Federal court and was bound by the administrative claim requirement, and therefore jurisdiction could not be had over the case.

In 1976, Congress enacted the first major revision of the Copyright Act in almost seventy years. An important aspect of this new Act, as amended, was the dramatic expansion of the "compulsory license" concept which had helped to keep the record industry afloat since 1909. The compulsory license allows participants of a copyrighted work without infringement if the copyright owner pays a compulsory license fee. Congress established a new agency in the legislative branch, the Copyright Royalty Tribunal, to set the fees which are to be paid by the users and, for the first time, every tribunal decision will be reviewed in a court of appeals level court. Thus far, the cases arising from the tribunal decisions have been appealed to set them aside. The cases arising from the tribunal decisions that are not appealed will be heard initially in an appeals level court.

In *Javine Brand, Inc., et al. v. United States*, the D.C. Circuit affirmed the dismissal of TRIS manufacturers' tort claim against the United States and Commissioners of the Consumer Product Safety Commission (CPSC). Plaintiffs sought approximately \$40 million in damages for losses allegedly caused when the CPSC declared TRIS-treated fabric to be a hazardous substance, banned its sale in interstate commerce, and required manufacturers to buy back their garments. The district court dismissed both the FTCA claims against the United States and the Commissioners. On appeal the dismissal of those claims was affirmed. The opinion is significant because it extends for the first time in this circuit the absolute immunity doctrine to quasi-legislative activities.

In *Hughes v. Lucas and Chappell v. Wallace*, the Supreme Court accepted the appellants' position that a Postal Service supervisor for alleged constitutional violations arising out of a personnel dispute. The Bush Administration brought an action to seven years of litigation and will result in the dismissal of numerous pending mailers' actions, resulting in Federal personnel disputes. It will also go far in alleviating the anxiety inherent in Federal supervisory decision-making. It may also serve to limit the availability of *Rovins* type relief in other areas where statutory relief encompasses constitutional concerns is available. [In *Chappell v. Wallace*, the Court accepted the submission that considerations of military discipline and effectiveness precludes recognition of a right of action under the Constitution between servicemen and their commanding officers. This landmark decision will avoid the serious impact on military discipline and decision-making that the lower court decision by the Ninth Circuit was sure to precipitate.

A nationwide class action, *Gray Panthers v. Schlesinger*, challenged the constitutionality of Health and Human Services' procedures for ordering notice and review to Part B Medicare claimants in disputed cases involving less than \$100. Plaintiffs challenged that *Achon v. Due Process Grounds* in a suit filed in 1977. On plaintiff's appeal, the D.C. Circuit in 1980 held HHS's procedure constitutionally inadequate and remanded for the development of an alternative process. On remand, the district court rejected HHS's proposal to supplement its existing scheme of notice and review with a system of telephone communications with the carrier responsible for processing Medicare claims. The district court ordered HHS to make specific hearings available retroactive to March 1976, and to send special notices to 30 million Medicare beneficiaries by November 26, 1982, for the purpose of identifying those potentially entitled to relief. The appellate court upheld, and the court of appeals stayed the injunction to the extent that it required oral hearings to be provided during the pendency of the appeal. The appellate court also applied the application which was filed with the Chief Justice. The staff pointed out in the stay application that the large costs of providing aollar while he borne by an irretrievable loss to the Medicare Trust Fund. This compliance would divert limited administrative personnel from the processing of all Medicare claims (including those involving such larger sum of money than \$100). The November 26 mail notice should create substantial confusion among Medicare recipients in the event the order below were reversed on appeal. In August 1981, the court reversed and remanded for further proceedings. The appellate court decision will result in immediate savings to the Medicare Trust Fund of approximately \$17 million plus an annual savings of approximately \$36 million.

In *Building and Construction Trades Department, AFL-CIO v. Denovin*, the D.C. Circuit upheld nearly all of the regulations issued by the Secretary of Labor in 1981 making several significant changes in Department of Labor policy under the Davis-Bacon Act. By allowing most of these regulations to be implemented, the D.C. Circuit declaration will likely save hundreds of millions of dollars a year in federal construction costs, as previous practices are abandoned that unduly inflated construction wages.

In *South Carolina v. Block*, the Fourth Circuit upheld the Secretary of Agriculture's imposition of 50 cents per hundredweight deduction on all milk marketed commercially. In favoring the district court of appeals found that the Secretary considered the relevant factor identified by Congress. The Fourth Circuit ruled that the deduction was not an illegal tax, was within Congress' Commerce Clause Power, and was not an undue delegation of power.

In *United States v. Tax-Ex Electric Cooperative*, the case raises the question of the Department of Energy's (DOE) authority to price electric hydroelectric power into effect on an interim basis. The power is sold under statutes which call for return to become effective upon confirmation and approval of the Federal Power Commission (FPC), but in 1977, the legislation establishing the DOE abolished the FPC and gave the Secretary of Energy both the new Department of Interim rate development authority and FPC's confirmation and approval role. DOE delegated to the new Federal Energy Regulatory Commission (FERC) only the power to place the rate into effect on a "final basis" or to "disapprove" and remand to DOE for a substitute rate. However, the Fifth Circuit Court of Appeals held that the Secretary's delegation order was a reasonable implementation of the confusing and, perhaps, conflicting policies and provisions of the Department of Energy Organization Act. DOE has advised that about \$900 million is at risk in these cases.

During and after the Vietnam War, the CIA instituted "Operation CIAQS" which was intended to determine the extent of foreign influence and support to the antiwar movement. The CIA solicited and received information from National Security Agency, in *Italkin v. Italkin*, plaintiffs are citizens and organizations who contend that they were the subject of surveillance due to their antiwar activity. Plaintiffs sought damages from former Government officials and declaratory and injunctive relief against the CIA. The district court upheld claims of the "state secrets" privilege asserted by the CIA in response to discovery requests of the plaintiffs. The court of appeals upheld the district court's judgment in far reaching opinion.

The appellate staff, during the past year, continued to seek management efficiencies to enable it to cope with a burgeoning caseload with no change in authorized personnel. As civil filings in the district courts have soared, there has been a carry-over into the U.S. Court of Appeals and the Supreme Court. The appellate staff has moved in several directions in try to meet its growing workload. The most significant improvements were the streamlining of the assignment process for the Courts of Appeals cases, modification of the procedure for handling attorney fee cases, creation of a new Special Appellate Counsel position, and reinstatement of an attorney detail program.

**Program Changes:** An increase of \$276,000 over the base is requested. This request will provide for an additional four positions (3 attorneys and 1 clerical), three workyears, and \$246,000 in personnel expenses and an additional \$30,000 for automated litigation support services. Based on current caseload and a projected increase in caseload in accord with documented Appeals Court trends, these increases will enable the staff to maintain the level of achievement of its major objectives. The staff will also be prepared to handle the increasing complexity of Federal litigation. Additionally, the funding level will allow completion of the process of determining whether the Government will appeal adverse lower court judgments within the Government's 60 day appeal period in a large percentage of cases. This will save time and avoid unnecessary filings and extension motions in cases where the Government ultimately decides not to appeal.

A program increase of \$30,000 for automated litigation support is recommended for the appellate staff which does not now have such a program. The appellate staff will be able to take advantage and make use of all the automated data bases established by the branches and offices in handling appeals resulting from their trial court activities. Each year, staff attorneys will be handling appeals of 10 to 15 trial court decisions in fact-intensive cases in which depositions and trial transcripts were not previously computerized at the branch or office level. These transcripts can total 10,000 pages. These cases are most likely to occur in the copyright, trademark and electric power or other energy related cases. In some of these appeals, unsubmitted depositions taken in the case, which may also be voluminous, are relevant to the appeal. When preparing the briefs in these cases, the appellate attorney must spend hours searching the transcripts and the depositions for testimony relevant to the issues for or she is brief. Where both the testimony and the issues being briefed are complex, the appellate attorney can save considerable time, and devote his or her energy to applying the legal issues if he or she can go directly to the relevant testimony in the transcript. This is possible only if the full texts of the deposition and trial transcripts are computerized.

	1984 Appropriation Anticipated		1985 Rate		1985 Estimate		Increase/Decrease
	Item. Frac.	WY Amount	Item. Frac.	WY Amount	Item. Frac.	WY Amount	
Torts Litigation,*****	177	182,134	177	182,512	201	199,625,634	23 17 \$2,052

**Long-Range Goal 1:** To protect the interests of the United States by successfully litigating in defense of nonmerit-based tort claims, preventing excessive losses from meritorious claims, and minimizing the monetary recovery for injury and damage to Government property.

Major Objectives:

To prevail in defensive tort suits.

To initiate and prevail in affirmative tort suits when the Government has sustained injury.

**Basic Program Description:** The Torta program addresses the problem of defending the United States in actions sounding in tort through a combination of litigation, administrative, and preventive or educational processes, and by prosecuting claims to ensure that the Government's right to damages is protected.

This program conducts, handles, or supervises two types of litigation: suits in defense of monetary claims (97 percent of the workload) and suits for the recovery of money (3 percent of the workload). This litigation encompasses four primary areas of activity: (1) tort claims filed against the United States under the Federal Tort Claims Act arising out of both traditional and rapidly emerging new areas of tort liability for the Government (e.g., asbestos, radiation, toxic substances, bank regulation, antitrust, medical malpractice and law enforcement); (2) claims (or constitutional) tort cases usually filed personally against individual Federal employees and officials, arising primarily out of law enforcement activities; (3) personnel actions, regulatory and economic activities, and Federal prisoner claims; (4) admiralty and maritime claims arising out of the United States' role as the world's largest ship owner and its activities to maintain and regulate navigation and (5) aviation cases involving damage to and by Government and private aircraft and aircraft accidents allegedly caused or contributed to by Federal employees.

The standard rule that the United States should not be liable for its regulatory or program activities in increasingly nuclear attack. Compounding this in the liberalization of the expansion of tort law both in the courts and the private sector. The courts through adverse decisions have subsequently expanded the areas of governmental tort liability. Cases which historically would have been the subject of relatively simple motions are now of major importance and threaten enormous programmatic and fiscal impact. Moreover, the vigorous efforts of the plaintiff bar require considerable effort on the part of the Torts Branch to protect the programmatic interests of the United States. These cases frequently entail a very large potential exposure and, therefore, require a substantial investment of resources.

Corresponding to the expansion in Governmental tort liability, the Branch is now experiencing an accelerated growth in all litigation areas with the exception of the aviation. The rise in caseload is further marked by litigation that is exceedingly complex and technical in nature. For example, the asbestos litigation is on the brink of becoming the largest, single case type in legal history. At the end of 1983, the branch was defending over 1700 cases involving \$1 million. The Division and the Department realized the ramifications of this litigation and in 1983 additional resources were approved for the purpose of providing a centralized base of attorneys to cope with the asbestos problem. Attorneys cases involve very complicated and technical matters and therefore, require a high level expertise to properly defend. At present, the U.S. Attorney's offices do not possess such expertise. Thus, Torts branch attorneys must be responsible for these cases. Other case types which require the expertise and specialization of Torts branch attorneys are: admiralty, admiralty, and aviation claims, to name a few. It is incumbent upon the Department to devote the necessary attorney personnel with the appropriate level of expertise to properly defend or represent the United States in such complex areas of litigation that expand new avenues of governmental tort liability.

The branch devotes 69 percent of its attorney worktime to litigation, which signifies a major commitment by the branch of attorney resources to the attainment of its objectives. The branch devotes approximately 31 percent of its attorney time to other matters including: 11 percent for supervision and administration; 5 percent for professional development; 2 percent for advice and assistance; 2 percent for correspondence and 11 percent for leave and other excused absences. A small staff of paralegals is used to assist attorneys in reviewing reports, depositions and testimony; preparing legal research, organizing document libraries, preparing case materials and summaries, as well as other assigned case-related activities.

Accomplishments and Workload: Quantitative measurements for the Tort Litigation program are presented in the following tables:

Litigation in Defense of Monetary Claims		1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
-- (Excluding Arbitrations)		6,437	6,666	6,966	7,300
1. Pending (Start of Year)					
2. New Recipients Distribution					
a. Retained by Division for Personal Handling					
b. Assigned to U.S. Atty. (Based on Settlement Authority and Case-by-Case Decisions)	806	1,143	1,156	1,496	
c. Jointly Handled and Monitored	1,427	1,634	1,655	4,260	
d. Delegated	1,204	1,461	1,461	2,010	
c. Additional Assignments to U.S. Atty. (Dictated by Lack of Division Atty.)	...	...	...	...	
e. Jointly Handled and Monitored	...	...	...	...	
f. Delegated	...	...	...	...	
g. Total (All New Receipts)	3,437	4,238	5,396	7,666	
3. Case Terminations					
a. Personally Handled	845	916	947	1,067	
b. Jointly Handled and Monitored	1,150	1,561	1,510	1,016	
c. by Incorporation	1,204	1,461	2,585	2,010	
d. Total Terminations	3,200	3,938	5,062	4,893	
4. Pending (End of Year)		6,666	6,966	7,300	10,173

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<b>5. Results (Personally Handled and Jointly Monitored Cases)</b>				
a. Dollars Defended (All Cases)	\$52,055	\$53,566	\$60,876	\$71,550
-- Begin Yr. and New Receipts (In Millions)				
b. Dollars Defended (Terminated Cases) (In Millions)	\$103,511	\$13,670	\$17,006	\$18,542
c. Dollars Awarded (In Millions)	\$10,110	\$88	\$10	\$12
d. Dollars Saved (In Millions)	\$103,371	\$13,582	\$16,978	\$18,721
<b>6. Performance Workyear used</b>	80	86	87	99
a. Attorney Workyears used				
b. Miller Savings per Attorney Workyear (In Millions)	\$1,292	\$158	\$195	\$189
<b>Litigation in Defense of Monetary Claims (Asbestos Only)</b>				
<b>1. Pending (Start of Year)</b>	761	1,210	1,749	3,283
<b>2. New Receipts by Distribution</b>				
a. Retained by Division for Personal Handling	36	103	1,614	9,956
b. Assigned to U.S. Atty's. (Based on Settlement Authority and Case-by-Case Decisions)				
-- Jointly Handled and Monitored	512	450	***	***
-- Delegated	546	553	1,614	9,956
-- Total (All New Receipts)				
<b>3. Case Terminations</b>				
a. Personally Handled	84	5	80	497
b. Jointly Handled and Monitored	15	9	**	9
c. By Delegation	**	**	**	506
-- Total Terminations	99	14	80	1063
<b>4. Pending (End of Year)</b>	1,210	1,749	3,283	12,733

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<b>5. Results (Personally Handled and Jointly Handled and Monitored Cases)</b>				
a. Dollars Defended (In Millions)	\$323	\$71	\$363	\$634
b. Dollars Awarded (In Millions)	\$11	\$71	\$152	\$152
c. Dollars Saved (In Millions)	\$323	\$323	\$353	\$402
<b>6. Performance</b>				
a. Division Attorney Workyears Used	5	16	32	32
b. Dollar Savings Per Attorney Workyear (In Millions)	\$65	\$4.4	\$12	\$15

**1. Litigation for Recovery of Money (Affirmative Actions)**

	1. Cases In Progress (Start-of-Year)	240	261	260	267
<b>2. New Cases Initiated</b>					
a. NY Division Attorneys	48	52	26	54	
b. Assigned to U.S. Attorneys (Case-by-Case Decisions)					
- Jointly Handled and Monitored	34	16	6	17	
- Delegated	18	8	8	11	
c. Assigned to U.S. Attorneys (Based on Lack of Division Attorneys)	...	...	34	8	
d. Needed Prosecutions Not Initiated (Based on Lack of Division Attorneys)	...	...	12	...	
e. Dollar Recoveries not Sought in Wrong Prosecutions (In Millions)	100	76	\$6.4	...	
-- Total Cases Initiated			88	90	

	1983 Actual	1983 Actual	1984 Estimate	1985 Estimate
1. Case Terminations				
a. Personally Handled	47	46	43	53
b. Jointly Handled and Monitored	14	21	11	13
c. By Delegation	18	8	7	5
-- Total Terminations	79	77	61	71
4. Pending (End-of-Year)	261	260	247	306
5. Settlements (Personally Handled and Jointly Handled and Monitored Cases Tracked)				
a. Dollar Sought (In Millions)	\$54.5	\$10.4	\$21.0	\$50.0
b. Dollar Recovered (In Millions)	\$13.3	\$2.6	\$5.6	\$11.6
6. Performance				
a. Division Attorney Workyears Used	3	2	1	2
b. Dollars Recovered per Attorney Workyear (In Millions)	\$4.4	\$1.4	\$5.8	\$5.8

In 1982 and 1983, the Torts branch has been highly successful in defending the interests of the United States in the primary areas of torts litigation. The branch has defended over \$17.5 billion in claims against the Government which resulted in the saving of \$17.3 billion and initiated over \$64 million in affirmative claims with a recovery of \$16.1 million. Specifically, the Torts branch successfully limited the United States' exposure to liabilities such as the significant awards to the Government in the air disaster case arising out of the January 13, 1982 crash of an Air Florida nonstop flight 90 in Washington, D.C., by winning dismissal of all actions for damages against the United States in Luzace v. United States, where a finding of liability against the United States would have had the potential for staggering financial losses and seriously hamper the Government's law enforcement activities against terrorist groups and the successful litigacy case in steamship history, United States v. Pacific Far East Lines, Inc. (N.D. Calif.), where, in large part, a settlement has been negotiated with an initial payment to the United States of approximately \$39 million.

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
5. Results (Personally Handled and Jointly Handled and Monitored Cases)				
a. Dollars Defended (in Millions)	\$323	\$71	\$363	\$634
b. Dollars Awarded (in Millions)	\$323	\$71	\$363	\$152
c. Dollars Saved (in Millions)				\$482
6. Performance				
a. Division Attorney Workyears Used	5	16	32	32
a. Division Attorney Workyears Per Attorney Workyear (in Millions)	\$65	\$4.4	\$12	\$15

## Litigation for Recovery of Money (Affirmative Actions)

	240	261	260	267
1. Cases in Progress (Start-of-Year)				
2. New Cases Initiated	48	52	26	54
a. NY Division Attorneys				
b. Assigned to U.S. Attorneys (Case-by-Case Decisions)				
- Jointly Handled and Monitored	34	16	8	17
- Delegated	18	8	8	11
c. Assigned to U.S. Attorneys (Based on Lack of Division Attorneys)	...	...	34	8
d. Needed Prosecution Not Initiated (Based on Lack of Division Attorneys)	...	...	12	...
e. Dollar Recoveries not Sought in Foreign Prosecutions (in Millions)	100	76	\$6.4 88	90 ...
-- Total Cases Initiated				

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
1. Case Terminations				
a. Personally Handled	47	48	43	53
b. Jointly Handled and Monitored	14	21	11	13
c. by Delegation	18	8	7	5
-- Total Terminations	79	77	61	71
2. Pending (End-of-Year)		261	260	206
3. Results (Personally Handled and Jointly Handled and Monitored Cases Terminated)				
a. Dollar Sought (in Millions)	\$54.5	\$10.4	\$21.0	\$50.0
b. Dollar Recovered (in Millions)	\$13.3	\$2.8	\$5.8	\$11.6
4. Performance				
a. Division Attorney Workyears Used		3	2	1
b. Dollars Recovered per Attorney Workyear (in Millions)	\$4.4	\$1.4	\$5.8	\$5.8

In 1982 and 1983, the Torts branch has been highly successful in defending the interests of the United States in the primary areas of torts litigation. The branch has defended over \$117.5 million in claims against the Government which resulted in the saving of \$117.3 billion and initiated over \$64 million in affirmative claims with a recovery of \$16.1 million. Specifically, the Torts branch successfully limited the United States' exposure to liabilities such as the significant awards to the Government in the air disaster case arising out of the January 13, 1982 crash of an Air Florida nonstop 737 in Washington, D.C. by winning dismissal of all actions for damages against the United States. A highly significant defense verdict in Luzzo v. United States, where a finding of liability against the United States would have had the potential for staggering financial losses and seriously hamper the Government's law enforcement activities against terrorist groups; and the successful litigation of the largest bankruptcy case in statehood history, United States v. Pacific Far East Lines, Inc. (N.D. Calif.), where, in large part, a settlement has been negotiated with an initial payment to the United States of approximately \$39 million.

In addition to these accomplishments, some of the branch's ongoing litigation involving major and complex lawsuits arising out of torts are: 1) asbestos litigation involving over 90,000 claimants and \$12 billion; 2) Trans Alton v. United States involving a alleged exposure of civilians to low levels of radiation from nuclear testing in the 1950's and 1960's involving one billion dollars; 3) General Public Utilities Corp. et al. v. United States amounting to over \$4 billion involving the Nuclear Regulatory Commission (NRC) inspections and oversight activities in the Three Mile Island disaster; 4) Clinch v. United States, involving a claim for \$50 million by citizens for the alleged failure of the Government to warn of the effects of exposure to plutonium and its removal from the mill near Times Beach, Missouri; and 5) Bivens litigation which are exceedingly complex and require anywhere from 20 to 50 percent more attorney time than other cases filed against the Government and will continue to rise in case numbers.

Toxic Substance Litigation is increasing and will continue to consume attorney workyears. This litigation is very complex and includes, for example, litigation arising out of synthetic rubber plants built for the United States during World War II, dioxin litigation, and litigation arising out of alleged exposure to toxic substances emanating from Government property. These cases involve billions of dollars at issue and their importance point to corresponding need to coordinate this litigation on a nationwide basis and to increase primary handling by branch attorneys. The remainder of torts litigation, e.g., aviation, admiralty, employment, negligence, and administrative claims, are experiencing an annual rate of growth of 10 to 15 percent and will also continue to consume attorney workyears.

Litigation for the recovery of money is triggered by incidents of injury or damage to Government property. With the unprecedented expansion in new areas, the number of affirmative cases actually initiated and the progress of their prosecution are significantly controlled by the defensive caseload. However, in 1985 the branch will continue the initiation of affirmative claims which will result in the prosecution of approximately \$50 million in recoveries of \$11.5 million.

The branch has undertaken several management initiatives in order to deal efficiently with its growing caseload. These include, among others: 1) an extensive preventive law and client relations program as a means of improving client relations; 2) a team case approach to provide training for less experienced attorneys and more flexibility attorney achieving; 3) the use of structured settlements in medical malpractice cases and other personal injury cases; and 4) the branch-wide implementation in 1983 of Automated Management Information Civil User System (AMICUS), a highly integrated office automation system which features word processing, legal research, case management, litigation support, executive management systems, and electronic mail capabilities with field offices.

**Program Changes:** An increase of \$2,052,000 over the base is requested. This request will provide for an additional 21 positions (16 attorneys, 1 paralegal, and 6 clerical), 17 workyears, \$1,356,000 in personnel expenses and an additional \$20,000 for reporter services, \$39,000 for private counsel, and \$10,000 for professional consultations. These increases will allow the branch to maintain the accomplishment of its major objectives.

The requested attorneys will help fend off the unprecedented attack on the Federal Treasury in the areas of toxic substances, radiation litigation, program negligence, and rivers actions as well as admiralty, aviation and medical malpractice. For example, Rivers actions are projected to increase by 50 percent or an increase of 485 claims over the 1980 level of 1,201. The requested attorney requirements are 16 additional attorney personnel. Given the unprecedented growth in litigation, the amount of dollars at issue and the resources available to plaintiffs' counsel, this request is modest. The implications of not resolving this needed personnel will result in the Government being forced to pay excessive liability judgments and eliminate its affirmative action. In the worst case scenario the judgment liability of the Government may reach \$10 billion a year. The implications to the Federal Treasury are enormous. The Government could be forced to reduce spending or increase taxes to finance potential torts liability. The resources required to support such attorney needs are minuscule compared to the financial benefits derived from their actions.

A program increase of \$200,000 is requested for reporter services and the purchase of transcripts of depositions, hearings, and trials. The funds needed for these services are dictated by the increasing numbers of cases, claimants, and witnesses to be disposed, the complexity of the issues being litigated, and the length of hearings and trials. Also, in 1985 the branch will commence securing machine readable rather than hard copy transcripts of depositions for all cases or families of cases which are included in our automated litigation support program.

An additional program request involves an increase of \$394,000 which would permit the branch to resort to private counsel in a greater number of litigious cases. Approximately 75 percent of litigious cases involve multiple defendants and the United States. The real and potential conflicts arises among defendants and, sometimes, between defendants and the United States. The situation is such that the branch now represents multiple defendants to an extent that would not be tolerated by the private bar as a matter of ethics. Substantially increased funding for private counsel would do much to alleviate this problem by permitting greater flexibility in resorting to private attorneys when real or potential conflict threat. Approximately a dozen cases involving multiple defendants and multiple private counsel are authorized every year. At least a similar number of cases involving multiple defendants who ought to have private counsel are not allotted private counsel or lack of sufficient funds. This program increase will permit the branch to process a greater number of private counsel cases to respond more effectively to the critical problem of Government officials being personally sued. The number should at least double in order to comply with emerging concepts of ethical representation.

The remaining part of the program increase is \$100,000 for expenses associated with professional consultations. In order to defend the United States in the often multibillion dollar emerging litigation, and to develop litigation strategies, our attorneys must acquire a thorough understanding of the general substantive subject matter with which the litigation deals. In addition to adequately support the litigation positions taken by the Government in many of the individual cases or claims, professional opinions and consultations are necessary. Without such an understanding and the benefits of professional consultations and evaluations, it is not possible for our attorneys to protect the interest of the Government. The fees for these consultants have also risen faster than the rate of inflation. The reason for this is that the majority of our consultants are specialists in the medical field. For example, the branch makes alternative use of neurologists and other health care practitioners to examine plaintiffs who eligible medical malpractice. The costs for securing these three services are higher than the rates charged by other professionals consultants. The costs for securing these critical professional consultations cannot be met through the PMA and Expert Witness fees appropriation because the provision will not apply in hearings and trials.

	1990 Anticipated			1995 Anticipated			1995 Actual			1995 Patients			Increased/Decrease		
	Term. Per. Pos.	MT Amount	Per. Pos.	MT Amount	Term. Per. Pos.	MT Amount	Term. Per. Pos.	MT Amount	Term. Per. Pos.	MT Amount	Term. Per. Pos.	MT Amount	Term. Per. Pos.	MT Amount	
Commercial litigation.....	205	\$12,250	205	204	\$13,061	215	230	\$15,566	40	30	\$1,595				

Long-range goal: To successfully prosecute claims for the recovery of monies fraudulently secured or improperly withheld from the United States; defend international trade policy; defend and assert the Government's contract and intellectual property rights; defend and assert the Government's financial and commercial interest under foreign treaties; and no longer own or owe the United States as a result of civil judgments, contracts, and defaulted loans.

#### Major Objectives:

To save the Government money by winning lawsuits and obtaining favorable settlements of contract, intellectual property, international trade, and Government employment litigation brought against the United States.

To collect money owed the United States as a result of defaulted contracts, unpaid loans, uninsured judgments, breach of grant agreements, and misuse of benefit programs.

To recover funds lost through fraud in any Government program and through the exemption of public employees, and to deter future losses by collecting the statutory penalties allowed for such violations.

To represent the United States, through foreign counsel, in foreign civil cases and to provide assistance in foreign internal trial, judicial matters.

Case Program Department: The Branch is responsible for the Government's civil litigation arising from fraud, injury, and other legal malpractice, the collection of civil fines or other monetary judgments, the collection of defaulted loans, and all litigation arising from the vast commercial undertakings of the Government. This program consists of several diverse elements.

In the Corporate/Commercial Debt Recovery Program: Branch attorneys, based on client agency referrals, initiate litigation to protect the interests of the U.S. in significant bankruptcy matters involving railroad and corporate reorganization proceedings; subside or insurance undertaken by the Government; foreclosures; claims and corporate rights made by the Government including student loan claims and veterans' educational assistance; veterans' re-employment rights in private industry including seniority rights; and claims for pay and other employment related benefits. The Branch also defends the Government in commercial cases arising out of its grants, loans, and contract programs.

In the Claims Court and Federal Circuit Cases, branch attorneys personally handle cases brought against the Government in the U.S. Claims Court and District Court and before administrative boards involving contract claims, civilian and military pay claims, claims based upon the Constitution, private relief claims referred by either house of Congress for a report as to their validity as legal or equitable claims for damages for unjust conviction and imprisonment; and excessive profits previously paid by the Government to contractors. Branch attorneys further initiate litigation to recover claims based on contracts, and if necessary, to force a claim on property in which the Government has a secured interest originating primarily from loan and guarantee programs of the Marine Corps Administration (PMIA) and the Small Business Administration (SBA). Additionally, branch attorneys litigate before Claims Court judges who hold trials throughout the United States and overseas. With the passage of the Federal Courts Improvement Act, Pub. L. No. 97-166, 96 Stat. 25 (April 2, 1982), the branch has experienced almost a 40 percent increase in Claims Court and Court of Appeals for the Federal Circuit (referred to collectively as CACI) cases.

In Civil Fraud, program managers immediately screen investigative reports received from the Federal Bureau of Investigation and the Inspector General in the various Federal agencies which possibly involve economic loss to the United States to ensure that any reports with case potential are assigned to an attorney for litigation decision. This screening process facilitates the expeditious processing of all referrals. Most fraud cases are personally handled by branch attorneys. Attorneys for joint handling or as monitored or delegated cases, branch staff continue to work closely with the Criminal Division, the U.S. Attorney and Client agencies in the effort to curtail white-collar crime through the Economic Crime Unit and Internal Educational Programs.

In the Judgment Enforcement program, attorneys are responsible for jointly handling, monitoring, and coordinating suits to collect money and serve as a coordinating link with agencies and the U.S. Attorneys Offices in the litigation of these claims.

In Intellectual Property, attorneys personally handle all cases of infringement upon the patent, copyright, and trademark rights of the Government and interference with those rights. They also initiate litigation seeking to cancel patents issued as a result of fraud perpetrated on the Patent and Trademark Office and to enforce assignment to the Government of rights to inventions growing out of Government sponsored research. These attorneys also personally handle all intellectual property cases at all appellate levels.

In Foreign Litigation, the program attorneys, through retained foreign counsel, represent the Government before foreign tribunals in civil cases brought by and against the United States and represent the Government in domestic cases involving questions of international and foreign law. They also direct and supervise international judicial assistance programs and assist in the service of judicial documents and transmittal of evidence requests in connection with litigation pending in foreign countries which are members of certain international conventions. Other responsibilities involve spending a sizeable portion of time in "white collar" cases where the United States seeks bank records and/or recovery of assets located abroad, the defense of complex suits involving application of foreign laws to contracts entered into abroad and employment of foreign nationals by the United States, and defending tax claims by foreign governments which often aggregate in the millions of millions.

In Customs and International Trade, attorneys personally handle all cases in the Court of International Trade and all customs cases in the Court of Appeals for the Federal Circuit. These cases involves the collection of customs duties and enforcement of international trade policies.

The staff devotes approximately 78 percent of its attorney worktime to litigation, approximately 7 percent of its worktime to management and employee supervision, and 7 percent to non-case specific activities. The remaining 8 percent covers leave and other excused absences.

A small staff of paralegals is used to assist attorneys in reviewing reports, depositions and testimony, performing legal research, organizing document libraries, preparing case materials and summaries, as well as other assigned case related activities.

Accomplishments and Workload: Quantitative measurements for the Commercial Litigation program are presented in the following tables:

		1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<b>1. Litigation in Defense of Monetary Claims</b>		<b>3,499</b>	<b>3,847</b>	<b>8,316</b>	<b>14,725</b>
<b>2. How Recipients Distribution</b>					
a. Retained by Division for Personal Handling.					
b. Assigned to U.S. Atty., (based on Settlement Authority and Case-by-Case Decisions)					
c. Additional Agents, to U.S. Atty., (Dictated by Lack of Division Atty.)					
d. Jointly Handled and Monitored					
e. Delegated					
f. Total (All New Receipts)					
<b>3. Case Terminations</b>					
a. Personally Handled					
b. Jointly Handled and Monitored					
c. by Disposition					
-- Total Terminations					

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<b>4. Pending (End of Year)</b>	<b>3,847</b>	<b>8,318</b>	<b>14,325</b>	<b>22,115</b>
<b>5. Results (Personally Handled and Jointly Handled and Monitored Cases)</b>				
a. Dollars Defended (in Billions)	\$ 6.182	\$1.400	\$3.798	\$7.295
b. Dollars Awarded (in Billions)	\$ .021	\$ .039	\$ .069	\$ .078
c. Dollars Saved (in Billions)	\$6.161	\$1.361	\$3.729	\$7.217
<b>6. Performance</b>				
a. Division Attorneys Workyears Used	77	77	87	104
b. Dollar Savings per Attorney Workyear (in Billions)	\$ .0800	\$ .0177	\$ .0429	\$ .0624

**Litigation for Recovery of Money (Affirmative Actions)**

	5,524	5,689	6,7464	6,810
<b>1. Cases in Progress (Start of Year)</b>				
<b>2. New Cases Initiated</b>	408	371	201	216
a. By Division Attorneys				
i. Assigned to U.S. Attorneys				
(Case-by-Case Decisions)				
- Jointly Handled and Monitored	1,196	1,493	1,487	1,601
- Religated	1,161	2,006	2,006	2,540
c. Assigned to U.S. Attorneys	...	...	176	...
(Based on Lack of Division Attorneys)				
d. Needed Prosecutions not Initiated				
(Based on Lack of Division Attorneys)	...	...	97	...
e. Dollar Recoveries not Sought				
In Forgone Prosecutions (in Millions)	2,765	3,870	552	4,357
-- Total Potential Caseload			3,967	
<b>3. Case Terminations</b>				
a. Personally Handled	568	325	341	724
b. Jointly Handled and Monitored	871	764	1,098	1,148
c. By Deligation	1,161	2,006	2,182	2,540
-- Total Terminations	2,600	3,985	3,621	4,462

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<b>4. Pending (End-of-Year)</b>				
5. Results (Personally Handled and Jointly Handled and Monitored Cases Terminated)	\$5,689	6,164	\$6,810	6,705
a. Dollars Spent (in Millions)				
b. Dollars Recovered (in Millions)	\$475	\$178	\$965	\$1,190
c. Dollars Recovered (in Millions)	\$93	\$61	\$33	\$41
<b>6. Performance</b>				
a. Division Attorney Workdays Used	23	24	13	14
b. Dollars Recovered per Attorney Workyears (in Millions)	\$4.1	\$2.5	\$2.5	\$2.9

Part II

Current Pending -- start-of-year	45,294	37,791	26,612	10,298
Received Completed	1,749	1,813	1,816	1,961
Pending -- end-of-Year Foreign Judicial Assistance Completed	9,252 37,791 4,746	13,002 26,602 8,769	18,190 10,298 9,136	4,400 7,859 9,521

In 1982 and 1983, the Commercial Litigation Branch has been highly successful in avoiding money judgments against the United States and collecting money owed the United States as a result of various commercial and statutory activities. The branch has defensed approximately \$7.6 billion in claims against the Government which has resulted in savings of over \$7.5 billion and resulted over \$853 million in affirmative claims with a recovery of \$154 million. Specifically, in the Corporate/Commerce Debt Recovery program, branch attorneys have obtained significant monetary recoveries for the Government such as: a \$41 million payment to both United States in a lengthy and complex bankruptcy proceeding involving a shipping firm; a \$4.6 million judgment favoring a contractor against a firm for breaking a contract for the United States equal to the United States' cost of \$1.3 million; a \$1.7 million judgment recovering claimants' legal fees provided by the State of West Virginia; and a \$1.7 million judgment of claims against an accounting firm and a holding company arising out of defalcations from a federally insured credit union. In other cases won by branch attorneys, an adverse decision would have had far-reaching problematic or fiscal consequences. For example, in bankruptcy proceedings involving defense contractors, branch attorneys have pursued the court to recognize a contract clause through which the United States maintained title to property worth hundreds of millions of dollars.

In addition to these accomplishments, some of the ongoing litigation involving major and complex issues arising out of this program area are: (1) a class action involving military proficiency pay in which the total exposure against the United States is estimated to be \$750 million; (2) two bankruptcy proceedings involving large tanker and shipping lines where the Government could be forced to pay approximately \$368 million in loan guarantees and forgo collection of a \$10 million note if plans of reorganization cannot be negotiated; (3) the continued pursuit of claims totaling over \$11 million, with approximately \$3 to \$4 million in accrued interest at stake, involving guaranteed loans to students and municipal bond default in (4) the WPPSS (Washington Public Power Supply System) litigation arising out of the largest municipal bond default in American history when construction was terminated on two nuclear power plants in the Pacific Northwest. In the latter case, potential damages sought against the Federal Government could range up to \$2 billion, excluding interest. The Commercial branch is handling three cases in coordination with the attorneys of the Federal Programs branch.

In Claims Court, the program has successfully limited the United States' exposure to liability arising out of related commercial litigation. For example, in *The Boeing Company v. United States*, branch attorneys successfully resisted a claim by the plaintiff which challenged accounting standards used in its cost reimbursement type contract, which if successful could have resulted in \$40 million in damages and the potential for governmental liability under similar contracts at a minimum of \$100 million. In other cases in this area, branch attorneys have successfully prevailed in claims against the Government challenging the potential liability of \$35.1 million and have also compromised entitlements saving the United States over \$20 million in potential liabilities.

Recent accomplishments in the fraud program area include a total recovery of over \$20 million in judgments and settlements during the past year, a 5 percent increase from the previous year. In addition, litigation of fraud and other problematic abuses have led to the avoidance of over \$7 million in student loan insurance payments which otherwise would have been made. The continued improvement shown in this area is the result of closer coordination between the Civil Division and various Inspector Generals of the Department. The branch has recently filed two suits seeking over \$2 million as a result of fraudulent schemes against the minority small business investment program, a \$3 million suit arising out of fraud in the Head Start program, and a \$17.5 million suit involving fraud against the Economic Development Administration.

Recent accomplishments in two cases in the judgment enforcement area (*U.S. v. Commercial Bank & Trust Company and U.S. and Malice, Inc. v. Robert H. Henderson, et al.*) include a total recovery of \$550,000 in judgments and settlements during the past year. Ongoing litigation in this area involves numerous test cases where an adverse decision against the Federal Government would have far-reaching programmatic or fiscal consequences.

For intellectual property, branch attorneys have been successful in negotiating favorable settlements in various patent infringement suits. For example, in *Lockheed v. United States*, a favorable settlement was negotiated where Lockheed straight royalty compensation for the procurement of several hundred million dollars worth of radar systems used in Navy aircraft. Ongoing litigation in this program area also involves numerous patent infringement suits seeking millions of dollars from the Government.

In foreign litigation involving affirmative cases, branch attorneys attached \$2.5 million in Swiss bank accounts and initiated suit in Switzerland demanding claims on behalf of the U.S. The branch is also litigating a suit to recover our interest in Italian property (\$1.4 million) previously seized. In defensive litigation, branch attorneys successfully defended personnel suits in which Italian citizens employed by the U.S. Military services sought reimbursement after dismissal. These decisions holding Italian law inapplicable to the U.S. Armed Forces' impact on numerous suits pending in Italian courts and future cases involving potential damages in excess of \$1 million arising out of attorney's also successfully defended a suit seeking damages against the United States in excess of \$1 million arising out of action by U.S. tax officials to enforce a tax judgment in Canada.

For customs and international trade, in Industrial Patents Group v. American Importers Association v. United States, the court ruled the Commerce Department's test for determining whether export payments are subject to or non-contingent, liable within the context of antidumping duty and would have destroyed the limitation imposed by the Trade Agreements Act of 1979 upon permissible offsets.

The branch has initiated several management actions which have improved the efficiency and effectiveness of handling the litigation for which the branch is responsible. Branch attorneys have expanded reliance on automated equipment to obtain personnel in personnel usage, including use of a computerized storekeeping system, upgrading of office word processing equipment, and the increased use of microfiche and computerized document handling techniques in complex cases.

Program Changes: An increase of \$1,500,000 over the base is requested. This request will provide for an additional 20 non-attorneys (27 attorneys, 2 paralegals, and 11 clerical), 30 woyere, and \$2,034,000 in personnel expenses and an additional \$150,000 for reporter services, \$8,000 for professional consultation, \$31,000 for foreign travel, and \$1,200,000 for automated litigation support activities. These increases will allow the program to maintain the level of achievement of all major objectives, properly manage the caseload activity, enhance its information technology systems, and provide an effective level of representation in litigating the increasing numbers of complex issues.

At the increased level of funding for personnel resources it will be possible for the attorneys to personally handle more of the program's litigation and improve the potential of recovery of monies for the Government. Some significant cases which will be personally handled at this level of funding include those new cases in the Claims Court and U.S. Court of Appeals for the Federal Circuit (CAFC). It is anticipated that increased defense spending and Government contracting will lead to more Claims Court and CAFC suits in both the general contract and intellectual property areas. Moreover, public law No. 97-395 will lead to an increase in cases in the Claims Court since that law grants the Court exclusive jurisdiction over claims for losses resulting from the 1977 ban on chemical TRIS in children's sleep wear.

In addition to taking over the CAFC workload, it is anticipated that the branch will return a positive role towards its litigation thereby initiating more litigation protecting the interests of the Government. In the Corporate/Commercial debt recovery program, present case receipts have doubled, primarily involving loan collection actions, foreclosures, and

reorganizations or liquidations. The underlying cause for this trend are linked to the Bankruptcy Reform Act of 1978 and the experience that insolvency filings are at their highest in the years immediately following an economic recovery. projections indicate that by 1985 over \$10 billion will be at issue. These cases involve very sophisticated economic and legal analysis and successful litigation requires additional experienced attorney resources.

Additional staff will enable the affirmative caseload to increase in the areas of fraud, waste and abuse, and debt collection. The joint establishment of the Defense Procurement Fraud Task Force in 1982 by the Departments of Justice and Defense, focusing the Government's resources on fraud in Defense Procurement Contracts, will precipitate numerous cases from the many investigation units within the Department of Defense. Notwithstanding careful scrutiny of fraud patterns screened by attorney, the number of cases is expected to increase by approximately 30 percent in 1985. In the area of debt collection and judgment enforcement, the Division is emphasizing more aggressive methods of recovery of monies owed the Government such as affirmative litigation asking to criminal patients that were issued as a result of fraud practiced on the Patent and Trademark Office. Legal action enforcing assignment to the Government of inventions arising in out of Government-sponsored research and development, infringing claims in excess of millions of dollars abroad and recovering loan money, student loans and veterans' educational assistance overpayments. These claims represent actual debts to the United States Treasury which can be recovered only if adequate resources are provided. Moreover, the resources available in individual cases will often have a direct impact on programs involving billions of additional dollars.

A program increase of \$150,000 is requested for reporter services and the purchase of transcripts of hearings, trials, and witness to be deposited, the complexity of the issues being litigated, and the length of hearings and trials. Also, in 1985 the program will begin securing machine readable, rather than hard copy, transcripts of depositions for all cases or families of cases included in the automated litigation support program.

A program increase of \$70,000 is requested for professional consultations. In order to properly defend the United States in this often multi-billion dollar emerging litigation and to develop litigation strategies, our attorneys must require a thorough understanding of the general substantive subject matter with which the litigation deals. In addition, to adequately support the litigation positions taken by the Government in many of the individual cases or claims, professional opinions and consultations are necessary. Without such an understanding and the benefits of professional consultation and evaluation, it is not possible for our attorneys to protect the interest of the Government. The costs for securing these critical professional consultations cannot be met through the Fees and Expert Witness appropriation because the providers will not appear as witnesses in hearings and trials.

A program increase of \$43,000 is being sought for foreign counsel. The foreign litigation caseload has increased during the recent past and is expected to continue to increase in the future. It is further anticipated that the time devoted to providing international judicial assistance and general legal assistance involving foreign law matters will substantially increase. Since Civil Division Attorneys are not authorized to appear in foreign courts representation of the U.S. is by local counsel whose services are secured under contract. This funding increase is being sought to cover the contractual expenses for the increased workload.

In foreign litigation involving affirmative claims, branch attorneys attached \$2.5 million in Swiss bank accounts and initiated suit in Switzerland asserting claims on behalf of the U.S. The branch is also litigating a suit to recover our interest in a ship property (\$1.4 million) previously repossessed. In defensive litigation, branch attorney successfully defended personnel suits in which Italian nationals employed by the U.S. Military services sought reemployment after dismissal. Those decisions holding Italian law applicable to the U.S. Armed Forces impact on numerous suits pending in Italian courts and future cases involving potential damages in excess of \$1 million. Branch attorney also successfully defended a suit seeking damages against the United States in excess of \$1 million arising out of efforts by U.S. tax officials to enforce a tax judgment in Canada.

For customs and international trade, in Industrial Partners Group, American Importers Association v. United States, the court sustained the Commerce Department's test for determining whether export payments are subsidies or non-discriminatory within the meaning of antidumping duty law. A loss in this case will have impacted the Commerce Department's ability to effectively administer the countervailing duty law and would have destroyed the limitation imposed by the Trade Agreements Act of 1979 upon permissible officials.

The branch has initiated several management actions which have improved the efficiency and effectiveness of handling the litigation for which the branch is responsible. Branch attorneys have expanded reliance on automated equipment to obtain economies in personal usage, including use of a computerized attorney timekeeping system, upgrading of office word processing equipment, and the increased use of microfiche and computerized document handling techniques in complex cases.

Program Changes: An increase of \$3,505,000 over the base is requested. This request will provide for additional 40 litigators (27 attorneys, 2 paralegals, and 11 clerical), 30 workdays, and \$2,034,000 in personnel expenses and an additional \$150,000 for reporter services, \$78,000 for professional consultation, \$43,000 for foreign counsel, and \$1,200,000 for automated litigation support activities. These increases will allow the program to maintain the level of achievement of all major objectives, properly manage the caseload activity, enhance its information technology systems, and provide an effective level of representation in litigating the increasing numbers of complex cases.

At the increased level of funding for personnel resources it will be possible for the attorneys to personally handle more of the program's litigation and improve the potential of recovery of monies for the Government. Some significant cases which will be personally handled at this level of funding include those new cases in the Claims Court and U.S. Court of Appeals for the Federal Circuit (CAFC). It is anticipated that increased defense spending and Government contracting will lead to more Claims Court and CAFC suits in both the general contract and intellectual property areas. Moreover, public law No. 97-295 will lead to an increase in cases in the Claims Court, since that law grants the court exclusive jurisdiction over claims for losses resulting from the 1977 loss on chemical T-1RS in children's sleep wear.

In addition to taking over the CAFC workload, it is anticipated that the branch will resume a positive role towards its litigation thereby initiating more litigation protecting the interest of the Government. In the Corporate/Commercial debt recovery program, present case receipts have doubled, primarily involving loan collection actions, foreclosures, and

reorganizations or liquidations. The underlying cause for this trend are linked to the Bankruptcy Reform Act of 1976 and the experience that insolvency filings are at their highest in the year immediately following an economic recovery. Projections indicate that by 1985 over \$10 billion will be filed. These cases involve very sophisticated economic and legal analysis and successful litigation requires additional experienced attorney resources.

Additional staff will enable the affirmative caseload to increase in the areas of fraud, waste and abuse, and debt collection. The joint establishment of the Defense Procurement Fraud Task Force in 1982 by the Departments of Justice and Defense, focusing the Government's resources on fraud in Defense procurement contracts, will precipitate numerous cases from the many investigation units within the Department of Defense. Notwithstanding careful scrutiny of fraud matters concerned by attorney, the number of cases is expected to increase by approximately 30 percent in 1985. In the area of debt collection and judgment enforcement, the Division is emphasizing more effective methods of recovery of monies owed the Government such as affirmative litigation seeking to cancel patents that were issued as a result of fraud and practiced on the Patent and Trademark Office. Legal action enforcing assignment to the Government of inventions growing out of Government-sponsored research, handling foreign attachment claims in excess of billions of dollars abroad; and recovering loans, student loans and veterans' educational assistance overpayments. These claims represent actual dollar losses to the United States Treasury which can be recovered only if adequate resources are provided. Moreover, the results in individual cases will often have a direct impact on programs involving billions of additional dollars.

A program increase of \$15,000 is requested for reporter services and the purchase of transcripts of depositions, hearings, and trials. The funds needed for those services are dictated by the increasing numbers of cases, claimants, and witnesses to be disposed, the complexity of the issues being litigated, and the length of hearings and trials. Also, in 1985 the program will begin securing machine readable, rather than hard copy, transcripts of depositions for all cases or families of cases included in the automated litigation support program.

A program increase of \$56,000 is requested for professional consultation. In order to properly defend the United States in the often multi-million dollar emerging litigation and to develop litigation strategy, our attorneys must require a thorough understanding of the general substantive subject matter with which the litigation deals. In addition, to adequately support the litigation positions taken by the Government in many of the individual cases or claims, professional opinions and consultations are necessary. Without such an understanding and the benefits of professionals' consultations and evaluations, it is not possible for our attorneys to protect the interest of the Government. The costs for securing these critical consultations cannot be met through the fees and Expert Witness appropriation because the providers will not appear as witnesses in hearings and trials.

A program increase of \$43,000 is being sought for foreign counsel. The foreign litigation caseload has increased during the recent past and is expected to continue to increase in the future. It is further anticipated that the firm developed to provide international judicial assistance and general legal assistance involving foreign law matters will substantially increase. Since Civil Division attorneys are not authorized to appear in foreign courts, representation of the U.S. in local counsel whose services are secured under contract. This funding increase is being sought to cover the contractual expenses for the increased caseload.

The remaining part of the program increases to \$1,200,000 for the automated litigation support activities, which will encompass at least 53 major cases or groups of cases in the areas of corporate/commercial debt recovery, intellectual property, civil fraud, and employment-related claims. The program will include accounting and financing of approximately 6,7 million pages of evidentiary documents; coding and automating approximately 200,000 documents; computerizing in full test 900 depositions and transcripts; maintaining 25 document production, exhibit, witness, and client management systems; and conducting 12 special purpose electronic and statistical analyses. In addition, because of the large volume of evidentiary documents collectively involved in the corporate/commercial debt recovery program and the anticipated growth for the next several years in this area, the program will establish a special document repository, similar to that already in existence for the asbestos-related documents. With asbestos, this central repository will make possible the simultaneous use of evidence by attorneys working at numerous locations, will greatly reduce the amount of time and the costs needed to respond to discovery requests, and will eliminate duplication of storage and copying requirements.

	1984 Appropriation		1985 Propose		1985 Estimate		Increase/Decrease Per Cent.
	Term.	Amount	Term.	Amount	Term.	Amount	
Federal Program.....	172	\$70	172	\$15,203	172	\$16,094	172 178 \$16,094

Long-Range Goal: To successfully defend the challenges to Federal civil programs, policies and initiatives and enforce remedies for statutory violations of Federal programs.

Major Objectives:

- >To prevail on behalf of the United States in defensive litigation which arises from judicial review of the decisions of all Government agencies.
  - >To initiate and prevail in affirmative litigation in cases aimed at remedying statutory and regulatory violations.
- Phase Program Description: The Federal Programs branch litigates on behalf of the United States and its 98 plus other Federal agencies, Cabinet members and other Federal executives acting in their official capacities and agencies. Members of Congress, other Federal executives, and other Federal employees may also file lawsuits challenging Presidential initiatives or the constitutionality of recently enacted or existing legislation. However, the branch also receives numerous requests from Agencies for the initiation of affirmative civil suits. Much of this affirmative litigation involves suits seeking to enforce Federal regulatory programs such as the Department of Transportation's rules on truck sizes and rates.

Litigation is divided into nine functional areas: Regulatory Enforcement; Government Employment (public and regulated private employment practices); Protection of Interagency and Intergovernmental Resources (social security, Medicare/Medicaid, food stamps and health planning); Housing and Community Development; National Security and Foreign Relations; Agriculture and Energy; Interagency and Foreign Commerce; and Independent Agencies and Government Corporations.

It is the objective of this program to provide virtually all the Government's agencies and their offices with representation in order to assure that Government policies and decisions are not frustrated through the judicial process. Litigation handled by this branch profoundly affects Federal entitlements expenditures. Every entitlements program that the Congress enacts generates civil litigation. The branch, in such matters, seeks judicial decisions in the interest of the Government and the U.S. Treasury. It also serves as the emergency litigation center for the Government. This involves handling the very complex litigation brought against the Government under extraordinary short time frames. This litigation is most often extremely sensitive, controversial, and of national and/or international importance.

Where it is anticipated that the factual and legal issues presented by a case will have nationwide impact or will effect a large number of pending cases, the case is personally handled by branch attorneys. Examples of such cases include suits challenging Administration initiatives, cases involving alleged and proven patronage discrimination, reduction-in-force litigation suits involving national security interests which attack the constitutionality of intellectual property and law enforcement programs, and many suits under the Freedom of Information Act. When cases are initially perceived to have the potential for developing complex factual issues or issues of law having ramifications on the national level, the case will be designated as jointly handled or monitored. This ensures that attorneys review incoming litigation reports with defendant agencies and consult with U.S. Attorneys' Offices on the proper arguments to make in defense of the litigation. Assistance to the U.S. Attorney and client agency is provided to ensure the development and presentation in court of a conscientious, thoroughly researched position on the legal issues involved. When a case is received which appears to present issues in an area in which the law is relatively uncharted, the case will be delegated to the U.S. Attorneys' Offices for direct handling, ordinarily without any further involvement on the part of the branch.

This program devotes approximately 77 percent of its attorney workyears to litigation (88 percent of this time is devoted to personally handled cases), 10 percent to jointly handled and monitored cases, and 2 percent to delegated cases), 6 percent of attorney worktime to management and employee supervision, and another 6 percent to non-case specific activities, including advice and assistance to client agencies, preparation of legislation related documents and non-case correspondence, and professional training and development. The remaining 11 percent covers leave and other excused absences.

A small staff of paralegals handles attorney by reviewing and indexing depositions and testimony and reviewing documents involved in discovery disputes. Branch paralegals also occasionally assist attorneys in preparation for trial.

**Accomplishments and Workload:** Quantitative measurements for the Federal Programs activity are presented in the following tables:

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<b>Engagement in Defense of Federal Civil Programs</b>				
Personally Handled Cases	836	735	703	669
Pending -- start-of-year	262	365	342	363
Received	363	397	376	360
Terminated	735	703	669	684
Pending -- end-of-year				
<b>Jointly Handled and Monitored Cases</b>				
Pending -- start-of-year	3,963	1,998	4,137	4,211
Received	1,005	1,077	1,085	1,234
Terminated	970	938	1,011	1,079
Pending -- end-of-year	3,998	4,137	4,311	4,593
<b>Cases Received and Disengaged</b>				
Cases Assigned to U.S. Attorneys (Initiated by lack of Division Attorneys)	1,583	1,716	2,708	2,788
<b>Performance Measures</b>				
Percent of Decisions	***	***	***	***
Favorable (Personally and Jointly Handled and Monitored Cases)	92%	92%	92%	92%

Litigation to Enforce Federal Civil Programs		1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
Petitionally Handled Cases					
Pending -- start-of-year					
Initiated	179	198	201	195	
Terminated	149	58	53	55	
Pending -- end-of-year	130	55	69	67	
Jointly Handled and Monitored	198	201	185	173	
Cases					
Pending -- start-of-year					
Initiated	788	954	1,075	1,120	
Terminated	285	210	185	185	
Pending -- end-of-year	119	89	140	144	
954	1,075	1,120	1,161		
Cases Deligated for Initiation					
Cases Not Initiated					
(Due to lack of Division Attorney)	117	87	63	71	
... . . . .	... . . . .	... . . . .	70	... . . . .	
Performance Monitoring					
Favorable (Personally Handled and Jointly Handled and Monitored Cases)	921	921	921	921	

In the past year, the branch has handled a large variety of high priority litigation of national and international significance. Considerable resources have been utilized in numerous lawsuits surrounding the construction of five nuclear power plants in Washington State by the Washington Public Power Supply System (WPPSS). The Bonneville Power Administration is involved in three of the five plants through "Participation Agreements" with WPPSS and nearly one hundred utilities. Ten of the plants have since been terminated, and the litigation has raised issues concerning the sharing of costs by two sets of twin plants, the authority of the utility to contract for participation in the project, and efforts seeking reclassification of costs of the various contractual obligations by the participating agencies. The litigation is in a number of Federal and state courts and potentially involves \$7 to \$28 billion. The branch successfully blocked a Washington State Initiative which would have imposed certain voter referendum requirements on further funding for the nuclear plants continuing to be constructed Initiative 3941. The Supreme Court denied an appeal of the favorable Ninth Circuit decision on this matter.

As in the WPPSS case, the branch has been required to handle more and more extraordinarily complex and time-consuming cases than it ever has had in the past. For example, in *Abrams v. Alberto-Culver Co.*, 500 plaintiffs are seeking damages against four retired FBI agents as well as against state and local law enforcement officials resulting out of an alleged conspiracy to violate plaintiff's civil rights. Another example is the New Orleans flood litigation. In these cases, the United States has sued dozens of localities and private developers for reimbursement, alleging that negligence and other misconduct caused flooding requiring payment of over \$95 million in flood insurance claims. The discovery phase alone is expected to take several years and require an enormous expenditure of resources.

This program has also been handling more and more title VII class action suits since the U.S. Attorneys are unable to involve sufficient resources to the defense of these suits, and because, in many instances, the defendant agency specifically requires direct branch representation. These cases often involve hundreds of plaintiffs and tens of millions of dollars in potential back pay awards. For example, in *Yarborough v. Sheldon*, a large title VII class action, a settlement was entered into which will require approximately 235 separate arbitration trials in 46 cities. Similarly, in *Tunney v. Secretary of the Air Force*, a special master will hear 121 individual claims of racial discrimination in promotions at Eglin Air Force Base.

In August 1983 the branch filed suit against General Motors Corporation in the U.S. District Court for the District of Columbia seeking the recall of 1.1 million automobiles known as "X-cars" and the imposition of civil penalties amounting to more than \$6 million. This is the first case brought under the National Traffic and Motor Vehicle Safety Act that seeks the imposition of civil penalties against a manufacturer for providing false information to the National Highway Traffic Safety Administration during the course of a defect investigation. General Motors' motion to dismiss the suit was denied in December. This is an important ruling in terms of its overall effect on the administration of the Safety Act.

The Government has prevailed in all respects in United Airlines, Inc. v. McKinnon (D.D.C.). This suit began in October 1983 as a challenge to the CAB's power to require United to submit "personal" reports, including the production of documents concerning virtually every aspect of United's computer reservation service. The CAB countered with a petition to enjoin the administrative order. In November United's complaint was dismissed and the airline was enjoined to comply with the CAB's order in all respects, such as the Federal Trade Commission, the National Highway Traffic Safety Administration, and the Interstate Commerce Commission, which have special report authority.

In National Tank Truck Carrier v. Lewis, the plaintiff challenged Department of Transportation regulations which imposed lower insurance levels for gasoline carriers, as well as DOT's review of regulations under Executive Order 11229. The court dismissed the suit in its entirety, thus preserving the regulations and avoiding judicial review of DMR actions taken under Executive Order.

In two major cases currently pending, *International Bricklayers v. IUD* and *Akron-Canton Chamber, American Subcontractors Ass'n v. Donovan*, the plaintiffs are challenging regulations exempting manufacturers of public housing projects from prevailing wage requirements of the minimum wage act. Favorable decisions in these cases would save the Government millions of dollars each year in costs for such "major repairs."

Program Chanona: No increase over the base is requested. With careful administration and management affiancées,  
The French should have sufficient resources to maintain the accomplishment of its major objectives.

1984 Appropriation				1985 Base				1985 Estimate				Increase/Decrease		
Param.	Anticipated	Param.	Anticipated	Param.	Anticipated	Param.	Anticipated	Param.	Anticipated	Param.	Anticipated	Per M.	WY	Amount
Per M.	WY	Per M.	WY	Per M.	Anticipated	Per M.	WY	Per M.	Anticipated	Per M.	WY	Per M.	WY	Amount
Consumer Litigation***	35	37	\$1,569	35	37	\$1,638		35	37	\$1,638		***	***	\$***

Long-Range Goal: To protect the interests of United States consumers from defective or harmful products and from unfair and deceptive trade practices.

#### Major Objectives:

To provide effective enforcement of Federal consumer protection statutes through institution of affirmative civil litigation.

To consider the prosecutive merit of criminal matters under consumer protection statutes and initiate or monitor the conduct of appropriate criminal proceedings.

To represent the United States in defensive litigation when initiatives and programs of the principal consumer protection agencies are challenged.

Base Problem Description: The Office of Consumer Litigation was established within the Civil Division under a reorganization plan approved by Congress in 1983. The Office has responsibility for litigation under Federal statutes designed to protect the public health and safety and regulate unfair and deceptive trade practices in interstate commerce. The Office initiates affirmative litigation to (1) ensure that unsafe and adulterated foods and drugs do not reach the marketplace; (2) protect the integrity of the drug approval process; and (3) enforce Federal policies in the regulation of food. The Office defends challenges to Federal policies and initiatives aimed at protecting the public in their purchase of foods, drugs, devices, and consumer products. Through the initiation of grand jury and criminal proceedings under the Federal statute prohibiting odometer tampering, the Office addresses a pervasive economic fraud estimated to cost the public as much as \$1 billion/year. Affirmative litigation covers such areas as hazardous and unsafe household products; unfair debt collection and consumer credit practices; franchising; door-to-door and mail order sales; enforcement of administrative orders relating to price fixing and diversion; unfair and deceptive advertising practices; and cigarette and automobile labeling. The Office personally conducts and monitors the conduct of substantive civil and criminal litigation under numerous consumer protection acts and statutes. The Office also assumes responsibility for personally handling most consumer litigation at the appellate court level under the monitoring of the Division's Appellate Staff.

The office devotea approximately 73 percent of its attorney time to litigation (34 percent to civil litigation and 39 percent to criminal litigation), about 4 percent of its attorney worktime to management and employee supervision, 8 percent to professional development and training, and the remaining 15 percent covers details, excused leave, official absences, and other substantive activities.

Accomplishments and Workloads: Quantitative measurements for the Office of Consumer Litigation are presented in the following table. Since the office was only recently established, no performance measures have been developed. As the office progresses, quantifiable measures of performance will be developed.

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<u>In controverted Product Initiatives</u>				
Pending -- start-of-year	394	297	338	359
Received or Initiated	197	220	220	220
Terminated	204	179	199	209
Pending -- end-of-year	297	338	359	370
<u>Civil Cases</u>				
Satisfied				
Pending -- start-of-year	167	126	152	152
Received or Initiated	86	133	133	133
Terminated	117	117	133	133
Pending -- end-of-year	136	152	152	142
<u>Criminal Cases</u>				
Pending -- start-of-year	72	65	88	95
Received or Initiated	56	35	35	35
Terminated	45	32	28	26
Pending -- end-of-year	65	86	95	104
<u>Appellate</u>				
Pending -- start-of-year	...	...	16	16
Received or Initiated	...	17	29	29
Terminated	...	1	9	22
Pending -- end-of-year	...	16	36	43
Total	541	518	594	642
Pending -- start-of-year	341	405	417	417
Received or Initiated	361	405	369	409
Terminated	366	329	369	409
Pending -- end-of-year	516	594	642	659

During 1983 the office has been active in carrying out its litigative responsibilities. For example, the office has been involved in numerous Federal Trade Commission (FTC) actions seeking civil penalties and injunctions against civil practices and unfair debt collection practices. One significant accomplishment is United States v. Louisiana Pacific, where the court assessed \$4 million in penalties against the defendant for its failure to timely file invent a manufacturing plant as required under a FTC cease and desist order. The office has been active in numerous other FTC matters, including United States v. Allied Publishers and United States v. Hrushaw, where the courts rejected defendants' attacks on constitutional grounds, on a provision of the FTC Act. Imposing liability for violations of a trade regulation rule.

In a number of cases challenging action by the Food and Drug Administration (FDA), the Courts rendered judgments in favor of the environment. In United States v. Genalex, the United States Supreme Court held that a generic copy of an approved drug must have its own approval from the Food and Drug Administration. The office has also been successful in litigation involving FDA's classification of diet products generally known as "health blockers" or drugs i.e., Nurrikah, Inc. v. Schweiher and American Health Products Co. v. Ilayas. In criminal cases relating to the FDA, the office obtained conviction in United States v. FDA successfully defended the FDA's refusal to prevent the use of certain drugs for lethal injections by various states in connection with capital punishment cases. In another case accomplishment, the office obtained in United States v. Ortiz, an indictment against a physician charged with authorizing false information to the FDA in connection with treating of drugs on volunteer patients.

In prosecution of odometer tampering cases, the office was successful in prosecuting and winning the conviction of a used automobile dealer for 10 counts of odometer tampering. Also, in United States v. East Carolina Salesmen's Credit Corporation pleaded guilty to 15 counts of obtaining information under False Statements in violation of the Fair Credit Reporting Act.

In cases involving the Consumer Product Safety Commission, the office successfully concluded a criminal contempt matter in United States v. Troxler Laundry, when the court imposed an \$80,000 fine and costs against the company for shipping Thal-S-trated garments to Venezuela in violation of a 1974 court order. In addition, the office obtained the largest civil penalty (\$20,000) ever assessed under the Flammable Fabric Act in United States v. United Carpet Mills, when the defendant sold carpet that did not meet the carpet flammability standard.

Other significant accomplishments of the office include: improvement of attorney-client relationships with listed number of Federal agencies by engaging in general dialogue with the agencies and providing guidance to them with respect to enforcement and litigation related matters; serving as a clearing house and resource point within the Department for consumer related programs and issues; reviewing various legislative proposals and drafting testimony and statutory language which have been incorporated in the Administration's subsequent legislative proposals direct at product tampering; providing prompt and often detailed responses to approximately 1,000 consumer inquiries each year; drafting informative responses to an average of about 45 to 50 Congressional or Presidential inquiries each year; systematically collecting information on sentences imposed for odometer and odometer-related violations for use by the U.S. Attorney's Office and responding to a number of inquiries relating to the Federal prohibition on television advertising of cigarettes and the requirement of the "Monopoly" sticker on new automobiles.

The office devotes approximately 73 percent of its attorney time to litigation (34 percent to civil litigation and 39 percent to criminal litigation), about 4 percent of its attorney worktime to management and employee supervision, a percent to professional development and training, and the remaining 15 percent covers details, exceeded (new, official business), and other substantive activities.

#### Accomplishments and Workload:

Quantitative measurements for the Office of Consumer Litigation are presented in the following table. Since the office was only recently established, no performance measures or performance will have been developed. As the office progresses, quantifiable measures of performance will be developed.

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<u>Uncontested Product Seizures</u>				
Pending -- start-of-year	304	297	338	359
Received or Initiated	197	220	220	220
Terminated	204	179	199	209
Pending -- end-of-year	297	338	359	370
<u>Civil Litigation</u>				
Seizures				
Pending -- start-of-year	167	136	152	152
Received or Initiated	86	133	133	133
Terminated	117	117	133	143
Pending -- end-of-year	136	152	152	142
Criminal Cases				
Pending -- start-of-year	72	85	88	95
Received or Initiated	58	35	35	35
Terminated	45	32	28	26
Pending -- end-of-year	85	88	95	104
Appellate				
Pending -- start-of-year	***	**	16	36
Received or Initiated	***	17	29	29
Terminated	***	1	9	22
Pending -- end-of-year	***	16	36	43
Total	543	518	594	642
Pending -- start-of-year	341	405	417	417
Received or Initiated	366	329	369	400
Terminated	518	594	642	659
Pending -- end-of-year				

During 1983 the office has been active in carrying out its litigative responsibilities. For example, the office has been involved in numerous Federal Trade Commission (FTC) actions seeking civil penalties and injunctive relief for violations of Combination Cents and Dollars Ordinance, trade regulation rules or statutes prohibiting anti-competitive conduct, various deceptive marketing practices and unfair debt collection practices. One significant accomplishment is United States v. Louisiana Pacific where the court assessed \$4 million in penalties against the defendant for its failure to timely deliver a manufacturing plant as required under a FTC cease and desist order. The penalty assessed was the largest in the history of the FTC. The office has been active in numerous other FTC matters, including United States v. Allied Publishers and United States v. Braswell, where the courts rejected defendants' attacks on constitutional grounds, on a provision of the FTC Act imposing liability for violations of a trade regulation rule.

In a number of cases challenging action by the Food and Drug Administration (FDA), the Courts rendered judgments in favor of the government. In United States v. Genotix, the United States Supreme Court held that a generic copy of an approved drug must have FDA's own approval from the Food and Drug Administration. The office has also been successful in litigation involving FDA's classification of diet products generally known as "starch blockers" as drugs, i.e., Nutrilabs, Inc., v. Schweiker and American Health Products Co., v. Hayes. In criminal cases relating to the office in United States v. FDA, successfully defended the FDA's refusal to prevent the use of certain drugs for lethal injections by various states in connection with capital punishment cases. In another case accomplished, the office obtained in United States v. Ortiz, an indictment against a physician charged with submitting false information to the FDA in connection with testing of drugs on volunteer patients.

In prosecution of odometer tampering cases, the office was successful in prosecuting and winning the conviction of a used automobile dealer for 10 counts of odometer tampering. Alan, in United States v. Eanterling & Stainmetz, a corporation pleaded guilty to 15 counts of obtaining information under false pretenses in violation of the Fair Credit Reporting Act.

In cases involving the Consumer Product Safety Commission, the office successfully concluded a criminal contempt matter in United States v. Trolley Store, when the court imposed an \$80,000 fine, and cases against the company for shipping this-tinted garments to Venezuela in violation of a 1978 court order. In addition, the office obtained the largest civil penalty (\$32,000) ever assessed under the Flammable Fabrics Act in United States v. Danube Carpet Mills, when the defendant sold carpet that did not meet the carpet flammability standard.

Other significant accomplishments of the office include: improvement of attorney-client relationships with a limited number of federal agencies by ongoing in general dialogue with the agencies and providing guidance to them with respect to enforcement and litigation related material serving as a clearing house and resource point within the Department for consumer related programs and issues; reviewing various legal documents and drafting testimony and statutory language which have been incorporated into the Administration's subsequent legislative efforts; direct contact product tamperers providing prompt and often detailed responses to approximately 100 consumer inquiries each year; drafting informative responses to an average of about 45 to 50 Congressional or presidential inquiries each year; systematically collecting information on antitrust, imposed for odometer and odometer-related violations for use by the U.S. Attorney's Office; and responding to a number of inquiries relating to the federal prohibition on television advertising of cigarettes and the requirement of the "Monetary" sticker on new automobiles.

Several management initiatives have contributed to increased efficiency in meeting the office's objectives such as the devotion of increased time to training investigative agency personnel; the installation of a new case tracking system; and the improvement of case management techniques.

	1984 Appropriation		1985 Appropriation		1985, Rose		1985 Estimate		Increase/Decrease		
	Term.	Anticipated	Term.	Anticipated	Term.	Amount	NY	Amount	Term.	NY	Amount
Immigration Litigation.....	30	30	\$2,520	30	30	\$2,654	30	30	\$2,564	30	...

**Long-Term Goal:** To protect the interest of the United States by successfully defending challenges to Federal civil immigration programs, policies and initiatives and conducting civil litigation under the Immigration and Naturalization Laws.

#### Major Objectives:

To prevail in all civil immigration litigation arising under the Immigration and Nationality Act and related laws.

To reinforce program undertaken for the purpose of facilitating the detention of illegal aliens.

To represent the United States in civil litigation brought against executives of the Immigration and Naturalization Service in their official capacities.

**These Program Description:** The office of Immigration Litigation was established in 1983 to protect the interests of the United States in connection with Federal civil litigation challenging the Government's programs, policies, and initiatives under the Immigration and Naturalization laws. The office is responsible for handling a wide variety of litigation cases, the most prominent of which include major class actions attempting to halt or otherwise frustrate enforcement of the laws. These cases generally are complex and typically involve requests for temporary restraining orders and/or preliminary injunctions, extensive discovery and trial. Depending on the issues, a single case can occupy one or more attorneys almost full-time for the majority of a work-year.

The office of Immigration Litigation personally handles, monitors, or delegates cases filed each year to challenge various rulings of the Immigration and Naturalization Service (INS), Departments of Labor and the State pertaining to substantive immigration issues. In response to emergent, as well as routine matters, the office has convened a staff of

senior litigators to personally handle the most significant immigration litigation. Organization of the attorney's la by trial teams. Each team is assigned a mixture of appellate and trial matters with the senior litigator responsible for matching the workload to the individual skills of team members. The senior litigator personally handles the most important cases and argues them most significantly before the INS. The senior member also has primary responsibility for training junior members of the team. Within the litigation-team approach, the office is in a position to respond effectively to multiple emergencies without significant disruption of routine matters.

The office handles petitions for review filed by individual aliens in the courts of appeals to challenge orders of deportation. The office represents the INS in all such cases nationwide, with the exception of two U.S. Attorney offices which have a separate immigration litigation unit. Representation of the INS in this regard has been consolidated with both the sophisticated and the routine attacks on behalf of the INS. An adverse ruling in one petition for review may result in numerous similar challenges being made by aliens who derive the automatic statutory stay of deportation. This is invoked upon the filing of a petition for review. It may entail substantial administrative burdens in the readjudication of many comparable cases if a basic procedural issue is decided against the Government.

A significant area of concern are habeas corpus suits against governmental officials responsible for immigration enforcement. These suits are involved in the defense of such cases either personally or through the process of deciding whether the official should receive representation at the government's expense. In addition, in habeas corpus suits where a conflict of interest between the defendant and Government arises, the office retains the services of a private counsel to represent the employee.

Another area of major concern to the INS involves habeas corpus actions filed in district court by individual aliens who are attacking their confinement and/or their orders of exclusion from the United States. These cases arise suddenly, and they often require prompt response. A loss in one can may translate into a series of defeats in factually or procedurally similar cases, with negative repercussions for the entire enforcement activities of the INS as to particular classes or nationalities of aliens. The office seeks to resist successfully these habeas corpus attacks by personally handling both difficult cases and those cases arising in jurisdiction lacking Government counsel experience in immigration matters.

#### Accomplishments and Workload:

Quantitative measurements for the office of Immigration Litigation are presented in the following table. Since the office was only recently established, no performance measures have been developed. As the office progresses, quantifiable measures of performance will be developed.

District Court Claims	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<u>Personally Handled Cases</u>				
Pending -- start-of-year	...	11	30	54
Received	...	22	39	44
Terminated	...	3	15	20
Pending -- end-of-year	...	30	54	78
<u>Monitored Cases</u>				
Pending -- start-of-year	...	22	147	298
Received	...	148	264	290
Terminated	...	23	113	133
Pending -- end-of-year	...	147	298	355
Cases Received and Delegated	...	295	554	592

Non-Title I Claims

Personally Handled Cases	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<u>Pending -- start-of-year</u>				
Received	...	295	410	568
Terminated	...	253	441	491
Pending -- end-of-year	...	130	271	608
<u>Supervised Cases</u>				
Pending -- start-of-year	...	418	588	588
Received	...	6	10	15
Terminated	...	11	22	25
Pending -- end-of-year	...	7	17	17
Cases Received and Delegated	...	10	15	23
	178	253	283	

During the past year, the office has handled a variety of litigation of national significance. In *Edmund v. Nalason* (F.D.L.), eight Haitian aliens filed a habeas corpus petition challenging final orders of exclusion stating they had made entry and were entitled to deportation. The district court, largely adopted our brief and ruled against the petitioners. In Title Petition for Naturalization of Richard Longstaff, the court held that half-admitted homosexual alien was "excludable" at the time he entered the United States in 1965, even though the Health Service did not issue a medical certification. The alien's petition for naturalization was denied by the district court. The court found that nothing in the Act requires that exclusion for homosexuality be based exclusively on a medical certificate. The court concluded that an alien's informed admission that he falls within an exclusive class is competent and sufficient evidence of excludability. The court of appeals also observed that the clear intention to exclude homosexuals within the plenary authority of Congress, and that any revision of that policy must be left to the legislature.

Some of the major issues involving immigration statutes presently being litigated are challenges to extended voluntary repatriation, hotel and restaurant employees Union v. Haitian; violations of the Administrative Procedure Act, Louis V. Nelson, involving a challenge to detention of Haitians; and the question of notices of political asylum to illegal aliens, Munas v. Goldin. These cases all involve issues that are of great importance to the policy and adjudication processes of this. A loss in one case could have severe implications for the agency's entire enforcement policy.

There is an incentive for aliens to litigate in the immigration area because of the resulting delays in the United States through the petition for review process, with its automatic stay of deportation. It is anticipated that a similar wave of petitions for review may be filed by individual aliens from El Salvador. Large numbers of habeas corpus actions are expected from the many excludable Haitians who are now nearing the completion of their administrative proceedings. Much of the increased workload generated by both groups of aliens will, out of necessity, fall to attorneys in the Office of Immigration Litigation.

The Office has been able to maintain a remarkable rate of success in obtaining 88 percent of persons handled cases and 79 percent of supervisord cases in victory for the Government. In 1984, the Office anticipates receiving over 500 habeas and deportation petitions. Compounding this situation will be an increase in complex class action attacks against INS, enforcement of immigration laws. It is of paramount importance that these cases remain personally handled due to the fact that they pose the greatest potential damage to the ability of the U.S. to enforce the law in this vital area. These particular claims are resource intensive cases and involve thousands of immigrants from the Haitians to the El Salvadorians.

#### Program Changes:

No increases over the base is requested. With careful administration and management efficiencies, the Office should have sufficient resources to maintain the accomplishment of its major objectives.

	1984 Appropriation			1985 Basis			1985 Estimate			Increase/Decrease Per Cent. Per Cent.	Amount Per Cent. Per Cent.
	Par. Anticipated Pos.	WY Amount	Par. 1985 Basis Pos.	WY Amount	Par. 1985 Estimate Pos.	WY Amount	Par. 1985 Estimate Pos.	WY Amount	Par. 1985 Estimate Pos.		
Management & Administration.....	106	107	\$4,515	106	107	\$4,781	106	107	\$4,799	...	\$18

**Long-Range Goals:** Direct the conduct, handling, and supervision of all litigation and other matters delegated by the Attorney General to the Civil Division in a fair, successful, and consistent manner.

**Major Objectives:**

- To provide executive leadership and maintain management effectiveness, creating a proper balance between central management control and individual attorney autonomy.
- To ensure, develop, and retain a competent and motivated staff, while maintaining a work environment conducive to maximum productivity and effective decision making.
- To plan and execute management improvement and support program, and provide administrative support services.
- To secure adequate financial resources and manage their expenditure.
- To develop and present to the Department legislative proposals which are reflective of Administration's goals and which promote the efficiency and effectiveness of the civil justice system.
- To analyze legislative and regulatory reform proposals and ensure that their litigative impact is minimized.
- To disseminate information about the work and activities of the Division to public officials and agencies and private individuals.
- To coordinate and ensure implementation of the Department's efforts to eradicate outstanding debts owed the Government.

**Role/Program Description:** The Management and Administration program is to facilitate and assure the effective representation of the United States in all civil litigation by and against the United States, its agencies and offices except for that civil litigation which is assigned to other litigating divisions of the Department. More specifically, the Office is charged with providing overall direction and management of the Division's programs, activities and staff, supervising and administering its operations, advising and assisting in the formulation of the Department's civil justice policies and programs, and providing management and administrative support services to the Division's staff. The program consists of the Immediate Office of the Assistant Attorney General, the Executive Office, the Office of Regulatory and Legislative Affairs, and the Freedom of Information/Privacy Act unit.

The office of The Assistant Attorney General formulates and implements litigation and management policy, participates in highly critical litigation and settlement negotiations, directs and supervises the branches, coordinates a program for consultation with client agencies, conducts and coordinates research on sensitive projects involving legal issues and policy, actively participates in the litigation and recommendation of legislation affecting the Division's litigation, and coordinates the department-wide debt collection activities.

The Executive Office controls and oversees selected management operations of the Division and provides administrative support services to the litigating Branches. It is responsible for providing planning and analytical advice and assistance to the Assistant Attorney General, his Deputy, and the branch managers in the development of management initiatives and systems; providing leadership in implementing and carrying out management initiatives and programs; and developing, enhancing, and maintaining the Division's manual and automated information and litigation support, budgeting, fiscal management, personnel, and administrative support systems.

The Office of Regulatory and Legislative Affairs coordinates preparation of the Division's response to Congressional, public, and Executive branch inquiries. It is responsible for receiving, reviewing, and forwarding legislation, regulation-related and case-related Congressional requests to the appropriate branch for comment providing liaison between the branch and the Department's Office of Legislation Affairs and ensuring appropriate handling and formulating of Division responses. The office also develops legislative proposals, envisions Administration's goals which promote the effectiveness of the civil justice system, and analyzes legislative and regulatory reform proposals ensuring that their litigative impact is minimized. In addition, the office prepares the majority of responses to citizen inquiries and non-case related Congressional inquiries and coordinates preparation of responses to the Executive Branch agencies.

The Freedom of Information office docket, reviews, and processes all Freedom of Information Act and Privacy Act requests for Division files and information, prepares annual reports, and serves as liaison with other divisions and agencies.

Accomplishments and Workload: Quantitative measurements for the Management and Administration program are presented in the following table:

Administrative Services	1982			1983			1984			1985		
	Actual	Estimate		Actual	Estimate		Actual	Estimate		Actual	Estimate	
Human Operations and Financial Management	39	53	53	39	53	53	53	53	53	53	53	53
Formulation Activ. and Spec. Analysis	2,868	3,655	3,684	2,868	3,655	3,684	3,684	3,684	3,684	3,684	3,684	3,684
Execution Reports Prepared and Reconciled	5,309	14,202	16,327	5,309	14,202	16,327	16,327	16,327	16,327	16,327	16,327	16,327
Fund Obligations Effected	7,547	7,606	7,719	7,547	7,606	7,719	7,719	7,719	7,719	7,719	7,719	7,719
Cash and Check Transactions Processed	34,135	40,400	41,006	34,135	40,400	41,006	41,006	41,006	41,006	41,006	41,006	41,006
Transactions Processed												
Information Management	69	89	120	69	89	120	69	89	120	69	89	120
Major Systems Projects and Analysis	204,664	308,054	261,888	204,664	308,054	261,888	204,664	308,054	261,888	204,664	308,054	261,888
Case Control Data Entries	273,103	246,177	312,012	273,103	246,177	312,012	273,103	246,177	312,012	273,103	246,177	312,012
Timeliness Input												

**Major Objectives:**

- To provide effective leadership and maintain management effectiveness, creating a proper balance between central management control and individual attorney autonomy.
- To recruit, develop, and retain a competent and motivated staff, while maintaining a work environment conducive to maximum productivity and effective decision making.
- To plan and execute management improvement and support program, and provide administrative support services.
- To secure adequate financial resources and manage their expenditure.
- To develop and present to the Department legislative proposals which are reflective of Administration's goals and which promote the efficiency and effectiveness of the civil justice system.
- To analyze legislative and regulatory reform proposals and ensure that their litigative impact is minimized.
- To disseminate information about the work and activities of the Division to public officials and agencies and private individuals.
- To coordinate and ensure implementation of the Department's efforts to eradicate outstanding debts owed the Government.

**Basic Program Description:** The Management and Administration program is to facilitate and ensure that effective representation of the United States in all civil litigation by and against the United States, its agencies and officers, except for that civil litigation which is assigned to other litigating divisions of the Department. More specifically, the Office is charged with providing overall direction and management of the Division's programs, activities and staff, supervising and administering its operations, developing and providing management and administrative support services to the Division's staff. The program consists of the immediate office of the Assistant Attorney General, the Executive Office, the Office of Regulatory and Legislative Affairs, and the Freedom of Information/Privacy Act unit.

The office of the Assistant Attorney General formulates and implements policy, participates in highly critical litigation and settlement negotiations, directs and supervises the branches, coordinates a program for consultation with client agencies, conducts and coordinates research on sensitive projects involving legal issues and policy, actively participates in the initiation and recommendation of legislation affecting the Division's litigation, and coordinates the Department-wide debt collection activities.

**The Executive Office controls and oversees selected management operations of the Division and provides administrative support services to the Litigating Branches.** It is responsible for providing planning and analytical advice and assistance to the Assistant Attorney General, his Deputy, and the branch managers in the development of management initiatives and systems; providing leadership in implementation and carrying out management initiatives and programs; and developing, enhancing, and maintaining the Division's manual and automated information and litigation support, budgeting, fiscal management, personnel, and administrative support systems.

**The Office of Regulatory and Legislative Affairs** coordinates preparation of the Division's response to Congressional, public, and Executive Branch inquiries. It is responsible for receiving, reviewing, relaying, and forwarding legislation, including related and case-related Congressional requests to the appropriate branch or committee providing liaison between the branches and the Department of Justice and ensuring appropriate handling and formulating of divisional responses. The office also develops legislative proposals, reflocates of Administration's goals, which promote the effectiveness of the civil justice system, and analyzes legislative and regulatory reform proposals ensuring that their litigative impact is minimized. In addition, the office prepares the majority of responses to citizen inquiries and non-case related Congressional inquiries and coordinates preparation of responses to the Executive branch agencies.

**The Freedom of Information office** docket, reviews, and processes all Freedom of Information Act and Privacy Act requests for Division files and information, prepares annual reports, and serves as liaison with other Divisions and agencies.

**Accomplishments and Workload:** Quantitative measurements for the Management and Administration program are presented in the following tables:

Administration Service	1982			1983			1984			1985		
	Actual	1983 Actual	Estimate									
<b>Budget Operations and Financial Management</b>												
Formulation Actv., and Soc. Analysis	39	53	53	53	53	53	53	53	53	53	53	53
Execution Reports Prepared and Reconciled	2,868	3,655	3,684	3,684	3,684	3,684	3,684	3,684	3,684	3,684	3,684	3,684
Fund Obligations Effectuated	5,309	14,202	16,827	16,827	16,827	16,827	16,827	16,827	16,827	16,827	16,827	16,827
Cash and Check Transactions Processed	7,547	7,606	7,719	7,719	7,719	8,568	8,568	8,568	8,568	8,568	8,568	8,568
Transactions Processed	34,135	40,400	41,006	41,006	41,006	45,517	45,517	45,517	45,517	45,517	45,517	45,517
Information Management	69	89	120	120	120	150	150	150	150	150	150	150
Major System Projects and Analys.	204,664	308,054	261,888	261,888	261,888	333,742	333,742	333,742	333,742	333,742	333,742	333,742
Chief Control Data Entries	273,103	286,177	312,012	312,012	312,012	346,333	346,333	346,333	346,333	346,333	346,333	346,333
Total Annual Inputs												

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<b>Management Analysis</b>				
Major Activities and Systems Analysis	21	33	49	70
Contract Specifications Developed	3	4	4	6
File Received and Catalogued	5,273	12,534	12,534	13,609
<b>Administrative Support</b>				
Special Recruitment Programs	17	11	14	16
Performance Rating Processed	595	775	821	911
Training Requests Processed	210	361	370	411
Small Purchases Entered	536	802	851	945
Personnel Actions Initiated	1,017	1,069	1,140	1,266
Applications for Employment Processed	4,497	4,507	5,121	5,251

	1982 Actual	1983 Actual	1984 Estimate	1985 Estimate
<b>Congressional and Public Communications</b>				
Congressional Inquiries	241	325	385	402
Request for Comments on Proposed Legislation	464	540	550	560
Public Inquiries	1,803	1,403	1,459	1,511
<b>Performance Measures</b>				
Timely Responses to Congressional Inquiries	631	821	871	831
Timely Comments on Proposed Legislation	704	701	701	704
Timely Responses to Public Inquiries	651	901	901	901

	1983			1984		1985	
	Actual	Estimate		Actual	Estimate		
Freedom of Information Act Requests							
Pending -- start-of-year	40	25		19	22		
Received	139	170		170	170		
Dispositions	134	176		167	169		
Pending -- mid-of-year	25	19		22	23		
Privacy Act Requests							
Pending -- start-of-year	20	21		18	18		
Received	249	275		275	275		
Dispositions	248	278		275	275		
Pending -- end-of-year	21	18		18	18		

The genuine measure of the accomplishment of the Management and Administration Office is reflected in the results of the litigation activities of the branches, offices, and staffs of the Division and the efficiency of their operations. During the past year, the office has continued to implement and expand upon a number of major management improvement programs designed to maintain a remarkable record of litigative success and to plan and implement additional programs for further improvements.

In February 1983, the office altered the organizational structure of the Division. This alteration permitted the office to provide an appropriate level of executive leadership for two new areas of litigation which were transferred to the Division from other parts of the Department, to establish a small office to provide Division-wide support and direction to legislative and regulatory reform matters, and to continue to provide management direction and leadership to our on-going litigative activities. As a result, the office has been able to quickly elevate to an appropriate level the Department's litigative support for the Administration's Initiative to better enforce immigration laws and laws affecting the health and safety of American consumers. Concurrently, the change provided the organizational structure and specialized staff capabilities to develop and pursue the enactment of legislation designed to improve the civil justice system and to assist in the Administration's efforts to reform the Federal regulatory system and eliminate unnecessary regulation of the private sector. For the first time, the Division has a capability to assess the litigative impact of legislative and regulatory reform proposals and to present to the Congress and other Federal officials the Division's assessment of additional case loads which will be generated in the Federal courts if the legislation or regulatory reform is enacted.

The most significant accomplishments are the implementation of ANICUS and the expansion of the Division's automated litigation support program. Access to ANICUS is provided through a single multi-user terminal which includes direct communications with the case management and other information systems housed on the Division's System/38 mini-computer. The Department's legal research system (JURIS), the financial management information systems (FMIS) the privately owned legal research and information data bases of WESTLAW, LEXIS, and NEXIS; and the numerous automated litigation support data bases being established on the Department's computers and by several Division contractors. ANICUS also includes an integrated word processing system and a telecommunications network which facilitates electronic communication and the transmission of documents and other information between various offices and between Washington and field offices located in New York and San Francisco.

The office continued efforts to ensure the integrity of financial and program management activities. In response to enactment of the prompt payment Act, the office reviewed the Division's formal procedures for initiating fund obligation and processing payment invoices. These revised procedures and accompanying controls have resulted in the avoidance of the loss in the payment of bills and the assessment of interest penalties. In 1983, interest was paid on only 15 out of more than 9,000 invoices processed. Those penalties totaled only \$57.27. In addition, the office designed and conducted an assessment of the vulnerability of all Division programs and activities to waste, fraud, abuse, and mismanagement and established a program of annual assessments and internal controls to minimize vulnerability.

The office continued to improve our programs to locate and attract highly qualified candidates for entry level attorney and support positions. The Division expanded its participation in the Department in Honors Graduate program. Designated to attract top law students and Judicial Law Clerks, the program is the primary source of entry level legal talent. Other programs include the Summer Law Intern program for third year law students, volunteer opportunities for undergraduate and first year law students for course credit, and summer clerical positions for high school students paid for by the Washington, D.C. Government.

One of the added functions performed periodically by the Assistant Attorney General in coordination and direction of the Department's debt collection activities concurrent to this function, the Department has implemented a debt collection plan which establishes the goals, accomplishments, and priorities for the Department's debt collection activities. This plan, which originated in 1982 and is revised on a yearly basis, is submitted to the Deputy Assistant Attorney General and the Office of Management and Budget for review. An part of the plan, the Department created a Debt Collection Task Force to coordinate and consolidate debt collection activities with the goal of eradicating outstanding liabilities owed to the Government. Among the Team's current efforts are the centralization of all Department debt collection policies into one reference manual, revising divergent dockets and reporting systems used by the 94 U.S. Attorney Offices with one Management Information System, and preparation for the establishment of a direct deposit or lock box system which will expedite the flow of collections to the Treasury by weeks. Through these efforts, the total amount of cash collected by this Department in 1982 was \$200,132,541. Most impressive was this cost, direct and overhead, to collect this amount -- only \$1.00 for every \$16.28 collected. In 1983, the amount collected was \$408,272,951, doubling this 1982 collection.

Improvements in efficiency were gained through programs to streamline responses to Congressional and other inquiries, and through systems to delegate procurement and purchasing authority to the Division for items up to \$500, which will result in administrative savings in procurement and hold delays.

Qualitatively, the office has instituted an SES Lecture Series designed to keep senior executives abreast of the latest in management technology and theory.

Program Changes: An increase of \$18,000 over the base is requested for the Automated Case, Resource, and Debt Management Systems. These systems, which are housed on the Division's own computer, are the principal data base established and maintained by the Division for the management and control of its caseload and financial and human resources. The Division's objective in establishing its own automated capability was to be able to provide attorneys, managers, and executives with independent control over the structure and source of information they need to direct and manage, to control the day-to-day functioning of the Division, and to facilitate planning, activation, As the Division's caseload and budget have grown and the management and organizational needs have changed, these management systems have been expanded and enhanced. From their inception in 1980, these systems have been considered the information centerpiece for litigation and financial and human resource management. As the move to maximum automation progresses throughout the Division, the role of these systems will continue to expand--both in focus and in importance. This increase will provide the program with sufficient resources to maintain the level of achievement of its major objectives, and will enhance its air accomplishments.

Although we have no plans to add new systems components during 1985, the use of these systems will continue to increase with the addition of more attorney and the dramatic increase in the Division's caseload. This increase will necessitate enlarging the system capacity and will require the acquisition of additional disk storage units. The increased funds will be used to provide for this additional storage.

<u>Civil Division</u>		<u>Salaries and expenses, General Legal Activities</u>	
		<u>Priority Ranking</u>	
<u>Program</u>	<u>Ranking</u>	<u>Program</u>	<u>Ranking</u>
Federal Appellate Activity	1	Commercial Litigation	1
Tort Litigation	2	Tort Litigation	2
Commercial Litigation	3	Federal Appellate Activity	3
Federal Programs	4	Management and Administration	4
Immigration Litigation	5		
Contractor Litigation	6		
Management and Administration	7		

**Civil Division**

**Salaries and expenses, General Legal Activities**  
**Detail of Permanent Positions by Category**  
**Fiscal Year 1983-1985**

Category	1983 Authorized	1984 Authorized	1985	
			Program Increments	Total
Attorneys (903).....	369	418	46	456
Paralegal Specialists (150).....	28	42	3	45
Gen. Admin., Clerical, and Office Svcs., etc. (100-399).....	290	333	18	351
Total.....	687	785	67	852
Washington.....	647	738	67	805
U.S. Field.....	39	46	***	46
Foreign Field.....	1	1	***	1
Total.....	687	785	67	852

Civil Division  
Salaries and expenses, General Legal Activities  
Financial Analysis - Program Changes  
 (Dollar in thousands)

Item	Federal Appellate Activities Per. Amnt.	Torta Litigation Pos. Amnt.	Commercial Litigation Pos. Amnt.	Management & Administration		Total Per. Amnt.
				Amount	Per. Amnt.	
<u>Grades</u>						
GS/GR-15.....	1	\$50	3	\$151	2	\$101
GS/GR-14.....	2	85	13	556	25	1,068
GS-9.....	1	17	1	21	2	42
GS-7.....	1	17	3	52	2	24
GS-6.....	1	17	3	46	9	139
Total penalties and annual rate.....	4	152	23	826	40	1,384
Lapse (-).....	-1	-5	-6	-49	-10	-267
Total workers and personnel	3	147	17	777	30	1,117
Compensation.....	3	147	17	777	30	1,117
Personal benefits.....	3	15	15	80	11	115
Travel and transportation of persons.....	3	14	14	152	11	154
Transportation of things.....	3	1	1	4	1	4
RIMC.....	3	14	14	91	11	266
Com., util., other ran.....	3	14	14	111	11	182
Printing and reproduction.....	3	8	8	45	38	38
Other services.....	3	54	54	660	45	1,490
Supplies and materials.....	3	5	4	45	7	51
Equipment.....	3	4	4	78	18	88
Total workers and obligations, 1965.....	3	276	17	2,052	30	3,505
					... .	18
						50
						5,851

Mr. HALL. Thank you very much, Mr. Willard, for a very thorough statement.

I would like to ask you one or two questions.

For 1985, you are seeking a budget of \$71 million and 852 permanent positions. Included in this request are program increases of \$5 million and 67 permanent positions. Then throughout your statement you set out where those permanent positions will be.

Now, with 852 permanent positions, could you tell me how much money was spent in the last fiscal year for private attorneys? Is that anywhere in this chart that you gave to me?

Mr. WILLARD. No, Mr. Chairman, it isn't, but I can provide you with that exact number.

The fiscal year 1984 budget request for private counsel totalled a little under \$500,000. I have the exact number here somewhere.

Mr. HALL. For 1984?

Mr. WILLARD. Yes, Mr. Chairman. We have asked for an increase of \$394,000 for fiscal year 1985. So that is almost doubling. The base amount for fiscal year 1984, Mr. Chairman, was \$493,000.

Mr. HALL. So you are asking for approximately \$800,000 for private attorneys in fiscal year 1985?

Mr. WILLARD. Yes, Mr. Chairman, that is correct.

Mr. HALL. Where will the additional money be spent and in what area will it call for you to spend that much more money for private attorneys?

Mr. WILLARD. This is in *Bivens* litigation, Mr. Chairman. These are lawsuits against Government officials who are sued for acts that they committed in the course of their duties.

We are required to retain private counsel in many of these cases because of conflicts of interest that may be presented. It has always been a touchy ethical problem for Justice Department lawyers to represent individuals who are sued in their individual capacity. These individuals include law enforcement agents as well as the entire range of Government officials who are sued in *Bivens*-type cases.

The growth in the number of those cases has been staggering. Although judgments are very rarely entered in the cases, it seems that plaintiffs find it convenient to throw in an individual count in a complaint when they are unhappy about something that the Government has done. Frequently these cases involve conflicts because a number of individuals will be sued.

Mr. HALL. How are those private attorneys arrived at? And, second, are they usually situated here in the Washington, D.C. area?

Mr. WILLARD. It depends, Mr. Chairman. They are spread around the country depending on where the litigation is. Now, we do not, as the Justice Department, decide which private counsel is retained. That decision is made by the individual and we provide reimbursement. Now, our reimbursement is at a much lower rate than the going rate for most lawyers in most communities. I send out a letter every time we retain private counsel and tell them that we are in effect asking them to do it in part as a public service because we cannot afford to compensate them at the same rate as many of them would charge.

Mr. HALL. Do you compensate private attorneys on an hourly basis?

Mr. WILLARD. Our cap is \$75, I believe. I don't have the exact numbers as to what our rates are but I can certainly provide that for the record.

Mr. HALL. People behind you are nodding their heads as though that is the—

Mr. WILLARD. Seventy-five dollars is the cap, that is the maximum.

Mr. HALL. Do you have difficulty getting competent attorneys at that rate?

Mr. WILLARD. We have generally been able to retain counsel in these cases. As I mentioned, we ask them to do it in part as a matter of public service because the individuals are representing our public servants, Federal employees who have been in most cases simply doing their job and have gotten someone mad at them and have been sued in the process.

Mr. HALL. On page 122 of the briefing materials, you state that the Commercial Litigation Branch has experienced almost a 40-percent increase in claims court and the court of appeals for Federal circuit cases.

Can you describe the nature of the cases responsible for that sharp increase?

Mr. WILLARD. Yes, Mr. Chairman. Part of the Federal Courts Improvements Act established the court of appeals for the Federal circuit. Certain kinds of cases that were previously litigated in other courts were centralized in the claims court and the court of appeals for the Federal circuit.

For example, judicial review of decisions of the Merit Systems Protection Board in Government employee cases were previously scattered in the various circuits and are now centralized in the court of appeals for the Federal circuit.

In addition, patent litigation, which was previously appealed to the various circuit courts is now concentrated in the court of appeals for the Federal circuit.

So as a result of these court reform measures, we have had cases placed in this court in Washington which would previously be litigated around the country in other courts.

Mr. HALL. Going back to this private attorney thing again—I am looking at page 9 of your brief—you mention, "The U.S. Court of Appeals of D.C. Circuit recently held that the courts are entitled to review any decision by the Government not to provide counsel to individual defendants," citing the case.

"This decision may cause the Division to have to employ private counsel in more cases."

Has it been a policy of the Government up to the time of this *Falkowski* case not to provide counsel for individual defendants?

Mr. WILLARD. Mr. Chairman, we receive many requests for representation. We approve some and we turn many down. Our criterion for determining whether to provide representation is whether it is in the interests of the United States overall. We look at a number of factors such as whether the employee was acting within the scope of his or her employment.

If a Government employee goes off and does something totally unauthorized and totally unrelated to official responsibilities, then we don't think the Government has a responsibility to provide representation in those cases. And sometimes it involves close questions of judgment as to whether a particular allegation involves something within the scope of official duties.

What this *Falkowski* decision means is that now the courts are going to be second-guessing us. When we turn people down for representation, which we do frequently, they can now go to court and sue us. And if they win, they can make us pay for their representation.

Mr. HALL. Do you make any kind of record when you refuse to allow private counsel?

Mr. WILLARD. Yes.

Mr. HALL. How do you handle that? I mean, what kind of a record does the appellate court have to make that determination other than looking at the record, the file of that case?

Mr. WILLARD. Up until now we have not really followed a procedure, an adjudicative type of procedure. Our policy when we receive a request for representation, has been to ask for the views of the agency at issue, and to submit the matter to a representation committee within the Civil Division. This is composed of attorneys from various components of the Division who have dealt with these issues in the past. It is chaired by Deputy Assistant Attorney General Wayne Vance who is in charge of our torts area, including our *Bivens* litigation.

That committee considers the request and, in light of the facts, submits a recommendation to me. I make a final decision as to whether or not to provide representation and send a letter stating the decision to the individual who requested the representation.

At the same time, we consider the question of whether the representation will be by a Department of Justice attorney directly or whether, for various reasons, it is necessary for us to authorize the retention of private counsel.

Mr. HALL. My point is, what does the appellate court have, as far as a record is concerned, to make the determination that you should or should not have allowed private counsel?

Mr. WILLARD. Mr. Chairman, I don't think they have that kind of a record available.

Mr. HALL. How did they make the determination in this *Falkowski* case?

Mr. WILLARD. Well, essentially it involves a de novo proceeding in the courts. It is not a record review by the court of appeals. It was an action brought in district court. The plaintiff made allegations about why he thought he was entitled to Government representation. We had to respond to those and the court ruled against us.

I think the *Falkowski* decision is a very bad decision. I think it intrudes the courts into an area which is essentially discretionary and which is difficult to litigate. I mean, you are involved in not only litigating the case itself but also litigating whether or not you should have defended the case.

Mr. HALL. Are you appealing that case?

Mr. WILLARD. It was a decision by the court of appeals. I don't think a decision has been made on whether we will seek cert but I doubt that we would in that case.

Mr. SHATTUCK. Mr. Willard, if I might interrupt and supplement Mr. Hall's question.

Was this proceeding initiated in the district court in connection with a trial that involved this individual or was it an independent appeal on the basis of a decision that was in fact a Federal agency decision that was subject to appeal under the Administrative Procedures Act?

Mr. WILLARD. I believe that it was initiated in district court by the individual and was not an agency appeal of the kind that we frequently have in the courts of appeals. So it was a district court decision upheld by the court of appeals and was based on the record made in the district court as opposed to review of an administrative record which was presented to the court of appeals.

Mr. HALL. Do you believe that the change in the standard of judicial review that is contained in the regulatory reform bill, the Bumpers amendment, would have a significant impact on the manner in which the Division handles challenges to agency decisions?

Mr. WILLARD. Yes, Mr. Chairman, I believe it would.

Mr. HALL. Substantially?

Mr. WILLARD. It is hard to say, Mr. Chairman, because a lot of the impact will depend on how the courts interpret this provision if it is enacted. The provision, of course, as you know, Mr. Chairman, has been through many revisions and clarifications. The legislative history alone, if it is enacted, is likely to be extremely complex.

The concern I have is that I don't think the courts are presently too deferential to Government decisionmaking. If anything, it is the opposite. I believe we have a problem of judicial activism in which many judges think that they are free to second-guess the decisions of Government agencies and substitute their own judgment for what has been decided by officials within the executive branch.

As a consequence, it seems to me that the proposed change in the standard of judicial review goes exactly in the wrong direction. It would, I think, exacerbate what is already a problem of excessive judicial activism.

Mr. HALL. Thank you. Thank you very much for your response. I now yield to the gentleman from Florida, Mr. McCollum.

Mr. MCCOLLUM. Thank you, Mr. Chairman. I have several questions in a couple of different areas.

One of them, I have had interest in immigration and I notice that you had covered that in your comments about the need for additional attorneys.

One of the questions I have relates technically to the request. You indicate that the President's supplemental appropriations request in his budget is for 14 positions. I am a little confused because you referred earlier in your written testimony to 14 positions that the INS had provided funding for. You also referred to reprogramming of 16 positions in related funding that we had provided earlier.

Are the 14 positions the President has provided for requested in his budget the INS positions that you are now assuming, is that what we are talking about?

Mr. WILLARD. That is correct, Mr. McCollum. It is not a real program increase. These are positions that are already there. It is just a shift so that instead of funding them through INS they will now be directly funded through the Civil Division budget.

Mr. MCCOLLUM. Is there any real program increase in this area that you are asking for?

Mr. WILLARD. There is not in our fiscal year 1985 budget submission.

Mr. McCollum. That is what I mean.

You would also still maintain the 16 positions that you already had that have been reprogramed previously, right?

Mr. WILLARD. That is correct.

Mr. McCollum. So there would be a total of 30 positions—16 and 14?

Mr. WILLARD. That sounds right to me.

Mr. McCollum. OK.

Mr. WILLARD. There may be a few others that we have had.

Mr. McCollum. Are these attorneys out in the field, working out of the Washington office, where are these 30 people?

Mr. WILLARD. These attorneys are in Washington. If I could I would like to take a minute to explain how that system works. It is similar to the way a lot of our other litigation is handled.

These attorneys don't do all the immigration litigation. Most of it is done by assistant U.S. attorneys in the U.S. attorney offices around the country in places where the litigation is actually pending.

The centralized office, though, does directly handle sensitive, precedent-making cases in the immigration area that require heavy policy input from the main office.

In addition, they supervise or monitor or cooperate in handling a number of other cases where the primary responsibility rests with the assistant U.S. attorney.

Then, finally, they coordinate work on appeals in the court of appeals. And they do a substantial amount of appellate work within that office, as does our appellate staff.

So it is in a way the tip of the iceberg as to the Justice Department effort in immigration litigation. But it is the first time that we have had really this kind of high level focused emphasis on immigration litigation. It has enabled us to take a lot more aggressive posture in these cases.

We are beginning to have better results. That is, we are beginning to win more cases and produce better judicial precedence. We won a couple of Supreme Court cases just a couple of weeks ago in the immigration area. That, I think, is going to help reverse a trend which for many years showed the courts increasingly encumbering the administrative process in immigration with new remedies and new rights and new procedures, all of which threaten to break the whole system down.

Mr. McCollum. That is encouraging. Anything like that you tell us is encouraging. We are pleased to hear it.

You have indicated there are, however, about 500 petitions of habeas corpus and deportation review petitions as opposed to 225, almost double—a little more than double—of what you had anticipated.

Is this based on basically a year, the last year, or is this—that is the doubling it within the year of what you had anticipated?

Mr. WILLARD. That is correct. Now, of course, when we set up the immigration office initially we weren't sure exactly what we would find, because it drew together functions that had been sort of scattered around or were previously found nowhere within the Department. So, to some extent we were shooting in the dark and it turns out that there is a lot more to be done there than we thought.

Mr. MCCOLLUM. Are these 500 cases, the cases that these 30 lawyers, the newly assigned situation up here, newly developed program, are directly involved with in some form or fashion? Or are they the total number of cases that are now pending in that area including the cases the assistant U.S. attorneys have that may not necessarily be involving time of the 30 attorneys up here?

Mr. WILLARD. I think it varies from case to case. I don't have the breakdown of how they allocate their time.

Mr. MCCOLLUM. I just wondered if there were 3,000 cases pending or 5,000 cases, or something like that down there in the field and this was just a figure for those that were up here, or if this is a nationwide total figure of cases involving petitions for habeas corpus and deportation, and so on—if this was the total number of 500 in the country in all aspects, or all phases.

Mr. WILLARD. I am not sure how those figures are derived. I would be happy to provide for the record.

Mr. MCCOLLUM. If you would provide it for the committee—I understand that you wouldn't know the answer to every question. I am just very curious about that.

[The information to be furnished follows:]

U.S. DEPARTMENT OF JUSTICE,  
CIVIL DIVISION,  
Washington, D.C., March 7, 1984.

Hon. SAM HALL,  
Chairman, Subcommittee on Administrative Law and Governmental Relations,  
House Judiciary Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: At our recent authorization hearing, we were asked by Rep. McCollum how many of the more than 500 habeas corpus and deportation review petitions filed in the last year were handled in Washington and how many were handled in the U.S. Attorneys' Offices.

The estimate was for petitions handled both in Washington and in the U.S. Attorneys' Offices. In FY 1983, we received 109 habeas corpus petitions, of which 18, or 12%, were personally handled by Civil Division attorneys; the remainder were handled by the U.S. Attorneys' Offices, some under the supervision or with the counsel of lawyers from the Civil Division's Office of Immigration Litigation. We received 463 deportation review petitions in FY 1983, of which 292, or 63%, were personally handled by attorneys from the Civil Division in Washington.

I trust this information will prove helpful.

Sincerely,

RICHARD K. WILLARD,  
Acting Assistant Attorney General.

## IMMIGRATION AUTHORIZATION HEARING

*Question.* Are the 500 or more habeas and deportation review petitions you estimated being handled out of the Washington office or does this reflect a nationwide figure?

*Answer.* The habeas and deportation review petitions are nationwide figures. In FY 1983, the Branch received 109 habeas actions of which 13 actions or 12% were personally handled out of the Washington office. The majority are processed by U.S. Attorneys except for those that have precedential importance such as (1) first habeas actions in the Haitian exclusion case and (2) most political asylum reviews. The branch also received 463 deportation review petitions in FY 1983, of which 292 petitions or 63% were personally handled out of the Washington office. The remainder are processed by the Second Circuit, and the Central District of California.

In a supervisory capacity the office advises on the uniformity in immigration law and provides manpower to U.S. Attorneys. For example, in *Ortega v. Rowe*, the Washington office sent an attorney in a supervisory capacity for three weeks to the Northern District of Texas, in an action challenging I&NS' utilization of detention facilities of local law enforcement agencies.

Mr. McCOLLUM. I want to ask you another question unrelated to the immigration issue.

I used to be a military lawyer in the Navy and I remember one of the problems we used to always have was the fact that U.S. attorneys around the country were swamped with efforts to do things like you have described here in so many facets—I am sure you still are.

One of the areas that was always reluctantly handled but done somewhat with benign neglect was the Medical Care Recovery Act effort.

It seemed to me from that and some of the other areas that we did not have sufficient resources or manpower in the U.S. attorneys area and your Civil Division area up here, for that matter, to effectively defend the cases brought against us such as you have described, with WPPSS and everything else, and still be able to go out and collect moneys.

You have referred to the concern over debt collection. I am concerned about that. We had a little debate on that before the end of the last session. But I am equally concerned about the efforts to recover moneys.

Are we still shorthanded in that area? You have asked for certain increases here but I don't see anything specifically related of this matter? Are U.S. attorneys still putting such things as medical care recovery efforts on the back burners and letting civilian attorneys sort of piggyback where they can? And unless the claim is enormous or something unusual, they aren't touching it? Can you tell me anything about it, let me ask you that?

Mr. WILLARD. I can give you some statistics on how recoveries under that act have increased. In 1963, the first year that the act was in effect, recoveries were \$259,000. Collections have increased steadily since then. In calendar year 1981, which is the last year I have figures for, a total of over \$22 million was recovered. So that you can see that the amount recovered has gone up considerably since the early sixties.

The problem you raise is a real one. That is, if I am a lawyer, whether in the Civil Division or out in the U.S. attorneys offices, and people are suing me—and I am having to file answers and defend lawsuits, I may be so busy doing that that I don't have time to go out and initiate lawsuits.

That is something we have tried to pay more attention to, not only the debt collection act area but also in medical care recovery.

We also have been working with this committee, as you know, for amendments to that act, which would improve our ability to recover in no-fault jurisdictions. And I understand that the chairman has indicated an interest in having hearings on that in the near future, and we certainly appreciate the committee's interest.

I want to assure you that we are going to do the best we can in recovering under the act and to take advantage of the amendments—if we are able to get them enacted—to try to improve our record there.

Mr. MCCOLLUM. I haven't discussed it with the chairman specifically on this subject but I know he and I are generally in agreement about trying to see the Government collect more money back in. And this is just an area that I personally wish to reemphasize concern over. And while I don't want to see us lose money either, I want you to defend all those cases.

It is nice to see the emphasis shifting and hopefully you will point out to us where we could be of assistance. I mean, if it was a question of three more attorneys there and could go out and collect a lot more money, why, I think we would be happy to provide that to you if it would more than pay for their salaries, which they probably do in that area.

It is just difficult for me sitting here, and I know from past experience—and talking with assistant U.S. attorneys over the years that they do have difficulty you described in spending the time necessary to, as you say, initiate lawsuits in the areas like medical care recovery or debt collection.

So, unless you emphasize it to them and then holler at us when they holler at you and say they don't have enough time, why, it doesn't happen.

Thank you, Mr. Chairman, I yield back.

Mr. HALL. Thank you, Mr. Willard. We appreciate your testimony.

One final question. If we pass this debt collection act which we have discussed, as amended, will that necessitate you coming back to ask for more personnel?

Mr. WILLARD. I have not studied the matter to know whether it would or not. I would be pleased to provide that information perhaps when we have hearings, as I understand the committee is interested in having hearings on our proposal—we would be ready then to provide a budget impact analysis of that.

Mr. HALL. Thank you very much, Mr. Willard.

Our next witness will be Mr. David Rogers.

#### **TESTIMONY OF DAVID H. ROGERS, GENERAL COUNSEL, FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES**

Mr. ROGERS. Thank you, Mr. Chairman.

I have prepared and submitted a brief statement about the Commission and I would like to have it made a part of the record, if the chairman is agreeable.

Mr. HALL. Without objection, your statement will be made a part of the record.

Mr. ROGERS. With that, I will be very brief.

As the chairman knows, the Foreign Claims Settlement Commission is a very small agency and our authorization is a very small part of the Justice authorization.

The Commission is presently involved in two programs which have been authorized: One, adjudicating claims against Czechoslovakia; and the other claims against Vietnam.

The program to adjudicate claims against Czechoslovakia finishes during fiscal year 1985. However, we are doing these programs in effect in tandem and I have put all the staff effort onto the Czechoslovakia program for several reasons—because it had an earlier deadline and because there is money available. As soon as we can complete our task, money can be distributed.

The Vietnam program doesn't technically wind up until February of 1986. And there is no money to pay those awards.

So, we made the decision that we would put all the staff's efforts on the Czech program until that was completed and then we would turn all our efforts on the Vietnam program and wind that one up.

We do have a few claims that come in under the Prisoner of War Claims Act provision but not enough to even call that really a program that the Commission is being involved in.

In addition to the programs we are actively involved in, of course, the Commission gets many, many requests either concerning the past programs that the Commission has completed or generally requests, either from Congress or individuals, or attorneys about the international law of claims or proposed programs.

Really, I don't feel that I should take the committee's time any further. I am more than happy to answer any questions that any members of the committee may have.

[The statement of Mr. Rogers and the justification of the Foreign Claims Settlement Commission follow:]



U.S. Department of Justice

Foreign Claims Settlement Commission  
of the United States

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Washington, D.C. 20579

SUMMARY OF TESTIMONY ON BEHALF OF THE  
FOREIGN CLAIMS SETTLEMENT COMMISSION  
BEFORE THE SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENT RELATIONS OF THE HOUSE COMMITTEE  
ON THE JUDICIARY

The Foreign Claims Settlement Commission is a small separate agency within the Department of Justice. The Commission acts as a quasi judicial body to determine the validity and amounts of claims by United States nationals against specific foreign governments, as authorized by statute.

The Commission is presently engaged in the investigation and determination of 1,617 claims against Czechoslovakia which program will be completed during fiscal year 1985. During the remainder of that fiscal year, the Commission will be engaged in determining some 533 claims, asserting losses in excess of one-half billion dollars against the Socialist Republic of Vietnam.

In addition, the Commission will continue its function of advising the Congress and Executive agencies concerning past and potential claims programs.

Most, if not all, of the funds appropriated for the administrative expenses of the Commission are ultimately recouped by the United States Treasury from a percentage of claims funds obtained for the payment of Commission awards.

For fiscal year 1985, the Commission seeks authorization to allow it to operate at its present level of activity, increased only to the extent that uncontrollable expenses will increase.

STATEMENT OF DAVID H. ROGERS, GENERAL COUNSEL  
OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION  
BEFORE THE SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENT RELATIONS OF THE HOUSE  
COMMITTEE ON THE JUDICIARY

The foreign Claims Settlement Commission is a small quasi judicial federal agency which has been authorized over the years by specific legislation to determine claims of United States nationals for losses of property in specific foreign countries. The present Commission was created on July 1, 1954 by Reorganization Plan No. 1 of 1954 and operated as a separate Executive agency until October 1, 1980 when the Commission was transferred by Public Law 96-209 as a separate agency within the Department of Justice.

The Commission consists of a Chairman, who serves on a full time basis, and two Commissioners, who serve on a part time basis, as their services are needed. The Commissioners are assisted by a staff, presently numbering 12, which consists of attorneys, secretaries and administrative personnel.

Unfortunately, in early September, the then incumbent Chairman, the Honorable J. Raymond Bell, died following an extended illness. As of this time, a successor has not been

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appointed. Although the loss of Chairman Bell has been sorely felt by the Commission and its staff, the work of the Commission has continued apace and its schedules for timely completion of its programs are being met. This in large part has been due to the dedicated effort and cooperation of the Commission's two part time Commissioners, the Honorable Frank H. Conway of Massachusetts and the Honorable Joseph W. Brown of Nevada.

During fiscal year 1984 and continuing through fiscal year 1985, the Commission is charged by statute with the adjudication of claims by United States citizens resulting from losses due to the confiscation of property by the Governments of Czechoslovakia (P.L. 97-127) and the Socialist Republic of Vietnam (P.L. 96-606). The major emphasis of the Commission has been centered on the investigation and determination of some 1,600 claims asserting losses against the Government of Czechoslovakia, as the Commission faces a statutory deadline for completion of this program by October 31, 1984. Following the completion of this program, the efforts of the Commission and its staff will be directed to the investigation and determination of over 500 claims filed against Vietnam, with the expectation of substantially completing that program by the end of fiscal year 1985.

The Commission has no general authority to adjudicate any international claim, even if meritorious. Rather, the Commission's authority comes from specific statutes which authorize the

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Commission to conduct a claims program involving all claims against a particular country. Over the course of years, the Commission has conducted programs involving claims of United States nationals against such countries as Poland, Czechoslovakia, Hungary, Rumania, Bulgaria, Yugoslavia, the German Democratic Republic, Cuba, and China. In the process of obtaining compensation for American citizens, normally three separate departments of the United States government become involved at some stage in the proceedings. The role of the Foreign Claims Settlement Commission is to obtain evidence and information concerning the claim and to make a determination as to whether the claimant has established a valid claim under international law and within the terms of the authorizing statute. If such a valid claim has been established, the Commission has the further responsibility to determine the amount of the loss so that a dollar award may be made to the claimant. The issuance of such an award, in and of itself, however, does not provide compensation to the claimant. Money to pay the awards of the Commission normally come from a lump sum claims settlement agreement with the foreign country which has confiscated the property. Responsibility for the negotiation of such an agreement normally rests with the Department of State. After the negotiation of a claims settlement agreement, it becomes the responsibility of the Department of the Treasury to actually distribute the proceeds of

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this fund to those claimants in accord with the awards which have been certified to the Department of the Treasury by the Foreign Claims Settlement Commission.

The order in which these events occur has varied with different programs. In the case of claims against Poland, the Department of State negotiated a lump sum settlement agreement, after which the Commission adjudicated the claims. In the case of claims involving the German Democratic Republic, the Commission completed adjudication of claims in May of 1981 and since then the Department of State has been attempting to obtain a lump sum settlement so that payments can be made to award holders.

The Commission is presently involved in the second phase of a program to adjudicate claims against Czechoslovakia. The history of the disposition of claims against Czechoslovakia illustrates a somewhat more complex pattern to accomplish both the adjudication and compensation for claims. In 1958, the Commission was authorized by Title IV of the International Claims Settlement Act of 1949, as amended, to adjudicate claims by United States nationals against Czechoslovakia for property which had been nationalized or otherwise taken between January 1, 1945 and August 8, 1958, the date of the statute. This program was completed in 1962 and total awards of over \$113 million were assessed by the Commission. As no settlement agreement had been reached by that time with Czechoslovakia, the Congress authorized

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the U.S. government to seize the equipment for a steel plant which had been purchased in the United States by the Government of Czechoslovakia. This equipment was then sold for approximately \$8 million which was initially distributed among award holders. After years of negotiations, ultimately, a new claims agreement was entered with Czechoslovakia in 1981, in which the Czech government agreed to pay an additional \$81.5 million in settlement of all claims against Czechoslovakia. The bulk of the settlement was set up in a fund to make further distribution to those claimants who already hold awards from the Commission. As is apparent, however, if an individual had property taken after August 8, 1958, he or she had no opportunity to submit a claim to the Commission and obtain an adjudication. Therefore, pursuant to the Czechoslovakian Claims Settlement Act of 1981, the Congress set aside \$1.5 million from the settlement and authorized the Commission to receive claims for any losses occurring after August 8, 1958 up to February 2, 1982, the effective date of the settlement agreement between the United States and Czechoslovakia.

The principal efforts of the Commission during this year are directed to an adjudication of these latter claims. Over 1,600 claims were filed, asserting losses in excess of \$425 million. The Commission is required to wind up all its affairs in this program no later than October 31, 1984 and, to accomplish this,

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must complete issuing all initial Proposed Decisions within the next five months to allow for the consideration of any objections which may be filed by claimants to the decisions of the Commission. During the last ten months, the Commission has issued some 1,200 decisions and appears to be on schedule for the orderly completion of the program.

Most of the claims filed with the Commission in this program do not meet the statutory requirements that for a claim to be compensable, property must have been owned by a United States national on the date of nationalization or other taking by the Czech government and such loss must have occurred after August 8, 1958. Unfortunately, most of the claims submitted do not provide sufficient information to allow the Commission to determine if these conditions have been met. This is either because the claimant lacks information or because the claimant withholds information from the Commission, knowing that to provide full details would cause the claim to be denied. As there was substantial publicity concerning the settlement of claims against Czechoslovakia, many individuals were of the opinion that they deserved to participate in the distribution of the claims fund because at one time predecessors in interest had owned property in Czechoslovakia, regardless of when the property was taken and whether it was owned by a United States citizen on the date of loss. It has, therefore, been a time consuming

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matter for the staff of the Commission to seek to elicit sufficient information from the claimants or from the Government of Czechoslovakia to attempt to determine sufficient facts to make a judgment as to the compensability of a claim. It is clear that most property in Czechoslovakia was taken by the Czech government prior to August 8, 1958, however, the Commission has attempted to thoroughly investigate each claim filed so that it will not overlook one of the relatively few valid claims filed in the program.

Under authority of Title VII of the International Claims Settlement Act of 1949, as amended, the Commission also has the responsibility to adjudicate claims by United States citizens against Vietnam. The Commission does not have to complete this program, however, until early in fiscal year 1986. Additionally, there are presently no funds available to pay awards made in the program against Vietnam. As the program to adjudicate claims against Czechoslovakia must be completed by the end of October 1984 and as there is money available to pay awards in this program, a decision was made to devote the entire staff attention to claims involving Czechoslovakia until that program is substantially completed and then to direct staff attention to the claims involving Vietnam. Therefore, at the beginning of fiscal year 1985, the Commission's efforts will be directed to the program to

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adjudicate claims against Vietnam. It is anticipated that we will have this program substantially completed by the end of fiscal year 1985.

There are presently pending two bills which would create additional claims programs for the Commission. One bill would provide standby authority for the Commission to adjudicate some 2,600 claims against Iran in the event that a lump sum agreement should be reached between the United States and Iran. These claims are presently being presented by the Department of State on behalf of the claimants before the U.S.-Iranian Claims Tribunal at the Hague. A recent bill introduced in the House of Representatives would direct that the Commission determine the amount of losses suffered by the next of kin of the American citizens who perished on Korean Air Lines flight 007.

In addition to the adjudication of current claims programs, the Commission each year receives thousands of inquiries concerning past and potential claim programs and provides advice to legislative committees and other Executive departments concerning matters involving foreign claims.

The Commission requests an authorization as part of the authorization of the Department of Justice, to enable it to continue its operation at the present level as during fiscal year 1984, increased only to the extent that uncontrollable expenses have increased.

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We would call to the committee's attention the fact that the Commission is unique in that its operating expenses are only partially, if at all, ultimately borne by the United States taxpayers. In most instances the authorizing statutes have provided for the payment of the Commission's awards from funds obtained, either from the liquidation of foreign assets blocked in the United States or from funds obtained from foreign governments by negotiation of a claims settlement agreement. The statutes have provided for the deduction of a certain percentage from such claims funds for deposit as miscellaneous receipts in the United States Treasury to defray the administrative expenses of the Commission and the Department of the Treasury in carrying out the programs. The total budgets of the Commission and its predecessors from the beginning of fiscal year 1950 through the end of fiscal year 1982 have amounted to approximately \$27 million (and the amount obligated, approximately \$23 million), whereas \$31 million has been recouped.

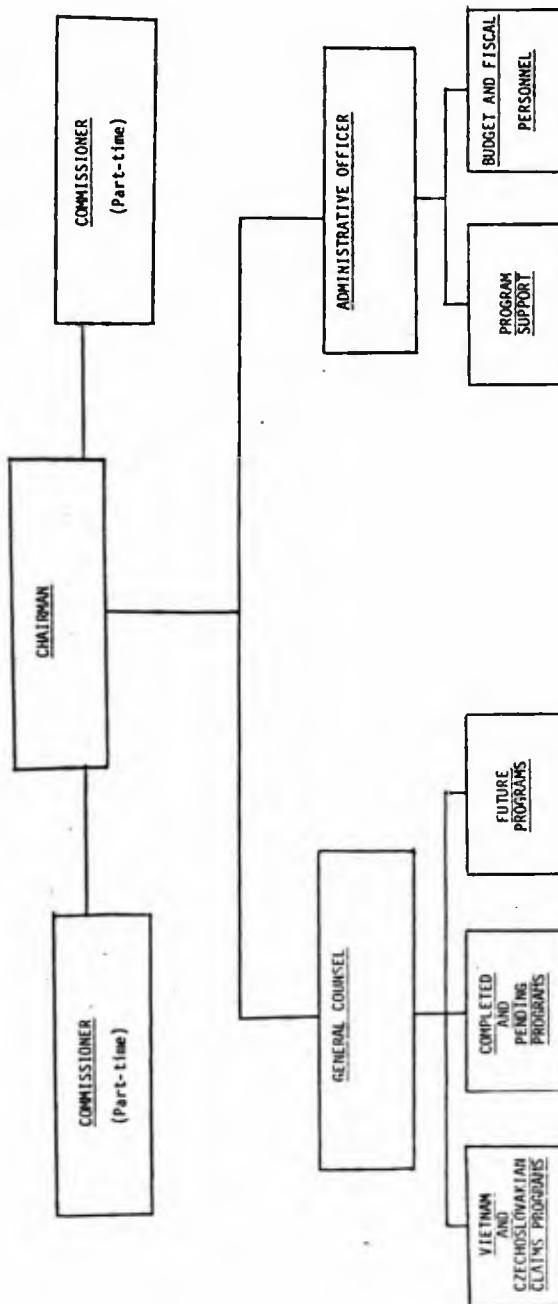
**DEPARTMENT OF JUSTICE**  
**Korello Claims Settlement Commission**  
**Budget Estimates, Fiscal Year 1985**  
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FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE  
UNITED STATES

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*D. Rogers, General Counsel*

Foreign Claims Settlement Commission

Summary Statement

Fiscal Year 1985

The Foreign Claims Settlement Commission is requesting a total of \$1,011,000, 18 permanent positions and 19 workyears for 1985. This request represents an increase of \$168,000 from the anticipated 1984 appropriation of \$843,000.

The principal function of the Commission is to settle the claims of American citizens arising out of the nationalization, expropriation or other taking of their properties and interests by certain foreign governments. The Commission has compiled and evaluated such claims against 12 countries under the International Claims Settlement Act of 1949, involving Yugoslavia, Paraguay, Bulgaria, Hungary, Romania, Italy, the Soviet Union, Czechoslovakia, Cuba, China, and the German Democratic Republic. The Commission and its predecessor agency, the War Claims Commission, have also undertaken and completed numerous programs arising out of World War II under the War Claims Act of 1948.

The Foreign Claims Settlement Commission functions with one budget activity covering the adjudication of international claims as well as the salaries and other costs of the three presidentially appointed members of the Commission, the Office of the General Counsel and an administrative support operation.

During the fiscal year, the Commission will complete a program under the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127, approved December 29, 1981) which requires the Commission to determine the validity and amounts of claims of nationals of the United States against the Government of the Czechoslovak Socialist Republic for losses resulting from the nationalization or other taking of property which occurred after August 8, 1958.

Additionally, the Commission will continue a program under Title VII of the International Claims Settlement Act of 1949 (Public Law 96-606, approved December 28, 1980) which requires the Commission to receive and determine the validity and amount of claims of nationals of the United States for losses of property in Vietnam as a result of nationalization, expropriation or other taking by the Socialist Republic of Vietnam.

Under the adjudication of international claims activity, the Commission will also provide continuing service to former and prospective claimants on a total of 32 completed international and war claims related programs. This staff will also be providing advice on policy determinations, preliminary planning, evaluation of pending claims legislation and liaison with congressional committees considering legislation intended to provide compensation to new categories of claimants.

The Commission will serve in an advisory capacity to other government agencies in matters of policy on claims of United States citizens against foreign governments. The planned staff for the budget year will provide advisory services to potential claimants and their attorneys concerning actual or possible claims agreements or legislation authorizing future programs. During 1985, the Commission will provide technical assistance to the Department of State in its efforts to negotiate claims settlement agreements with foreign governments. Under the provisions of Section 620(e) of the Foreign Assistance Act of 1961, the Foreign Claims Settlement Commission is authorized to evaluate appropriated property upon the instructions of the President.

Under the War Claims Act of 1948, as amended, the Commission authorizes payments to American military prisoners of war captured by hostile forces in Southeast Asia during the Vietnam conflict. The Commission to date has granted awards to 733 prisoners of war or their survivors in the amount of \$5,334,070; \$229,337 to 41 civilian internees; and \$58,675 to members of the crew of the USS Pueblo for a total of \$5,632,082.

The status of a small number of MIA's with prisoner of war classification remains to be determined by the Department of Defense. Upon receipt of these final determinations, this program will be completed.

The Commission consists of a Chairman and two part-time Commissioners, all of whom are appointed by the President with the advice and consent of the Senate. The part-time Commissioners receive compensation at the Executive Level V rate of pay for performance of official business of the Commission at the direction of the Chairman.

Foreign Claims Settlement Commission

Salaries and expenses

Proposed Authorization Language

The Foreign Claims Settlement Commission is requesting the following authorization language:

For the Foreign Claims Settlement Commission \$1,011,000, including-

- (A) services as authorized by Section 3109 of title 5, United States Code;
- (B) expenses of packing, shipping and storing personal effects of personnel assigned abroad;
- (C) rental or lease, for such periods as may be necessary, of office space and living quarters for personnel assigned abroad;
- (D) maintenance, improvement, and repair of properties rented or leased abroad, and furnishing fuel, water, and utilities for such properties;
- (E) advance of funds abroad;
- (F) advances or reimbursements to other Government agencies for use of their facilities and services in carrying out the functions of the Commission;
- (G) hire of motor vehicles for field use only;
- (H) employment of aliens.

Foreign Claims Settlement CommissionSalaries and expensesJustification of Proposed Changes in Appropriation Language

The 1985 budget estimates include proposed changes in appropriation language listed and explained below.  
New language is underlined and deleted matter is enclosed in brackets.

Salaries and expenses

For expenses necessary to carry out the activities of the Foreign Claims Settlement Commission, including services as authorized by 5 U.S.C. 3105; allowances and benefits similar to those allowed under the Foreign Service Act of 1980 as determined by the Commission; expenses of packing, shipping, and storing personal effects of personnel assigned abroad; rental or lease, for such periods as may be necessary, of office space and living quarters of personnel assigned abroad; maintenance, improvement, and repair of properties rented or leased abroad, and furnishing fuel, water, and utilities for such properties; insurance on official motor vehicles abroad; advances of funds abroad; advances or rebursements to other Government agencies for use of their facilities and services in carrying out the functions of the Commission, hire of motor vehicles for field use only; and employment of aliens; [~~\$827,000~~] .

Explanation of changes

No substantive changes proposed.

Foreign Claims Settlement CommissionSalaries and expensesGrosswalk of 1984 Changes  
(Dollars In thousands)

<u>Activity/Program</u>	1984 President's Budget Request				1984 Congressional Appropriation Actions on 1984 Request				1984 Supplemental Request				1984 Appropriation Anticipated			
	<u>Pos.</u>	<u>WY</u>	<u>Amt.</u>		<u>Pos.</u>	<u>WY</u>	<u>Amt.</u>		<u>Pos.</u>	<u>WY</u>	<u>Amt.</u>		<u>Pos.</u>	<u>WY</u>	<u>Amt.</u>	
1. Adjudication of International Claims.....	18	19	3954	...	...	19	357	-3127	...	...	...	...	16	18	3843	...
Total.....	18	19	3954	...	...	19	357	-3127	...	...	...	...	16	18	3843	...

Explanation of Analysis of Changes from 1984 Appropriation RequestCongressional Appropriation Actions

The Congress reduced the amount available for the budgeted increase for payments to the General Services Administration for space and services and reduced all appropriation requests by a further one percent.

Supplemental Requested

The supplemental request for \$16,000 provides for increased pay requirements contained in Executive Order 12456.

Provision Claims Settlement Commission

### Salaries and expenses

Summary of Requirements  
(Dollars in thousands)

Estimated by budget activity/program	1983 Enacted				1983 Actual				1984 Appropriation Anticipated				1985 Base				1985 Estimate				Increase/Decrease			
	Pers.	WY	Ant.	Poe.	Pers.	WY	Ant.	Poe.	Pers.	WY	Ant.	Poe.	Pers.	WY	Ant.	Poe.	Pers.	WY	Ant.	Poe.	Pers.	WY	Ant.	Poe.
Adjudication of International claims.....	18	19	\$774	18	14	4636	18	19	4843	18	19	4843	18	19	\$1,011	18	19	\$1,011	18	19	...	...	...	...

Vietnam Claims Settlement Commission

Justification of Program and Performance

Activity Resource Summary  
(Dollars in thousands)

Activity:	1984 Appropriation Anticipated			1985 Base			1985 Estimate			Increase/Decrease		
	Per. Pos.	W/ Amount	Per. Pos.	W/ Amount	Per. Pos.	W/ Amount	Per. Pos.	W/ Amount	Per. Pos.	W/ Amount	Per. Pos.	W/ Amount
Adjudication of International Claims .....	18	19	\$83	18	19	\$1,011	18	19	\$1,011	...	...	...

Long-Range Goal: To make effective determinations of all unsettled claims of American nationals against foreign governments within the framework of Congressional modifications to the International Claims Settlement Act of 1949.

Major Objectives:

- To identify and categorize issues and unique problems peculiar to the Vietnam Claims Program.
- To review evidence on claims and to seek additional information from sources to be determined.
- To complete all hearings and issue all remaining final decisions on Czechoslovakian claims.
- To prepare and issue decisions on 95% of all outstanding claims in the Vietnam Claims Program.
- To conduct pre-program planning of pending new programs.
- To provide technical assistance upon request to the Department of State during the course of negotiations on claims settlement agreements.
- To respond to requests for policy determinations on matters relating to the settlement of international claims.

Base Program Description: The adjudication of International Claims activity of the Commission consists of a small staff at the Commission headquarters. Additionally, this activity provides administrative support for the Commissions and legal advice to the adjudicatory functions and the Commissioners.

Public Law 96-606, approved December 28, 1980, authorized the determination of claims of American nationals for losses resulting from the nationalization of American-owned property in Vietnam by the Socialist Republic of Vietnam. In carrying out its function, a staff of attorneys reviews the evidence submitted and seeks additional information from a wide variety of sources and researches legal issues under international law. The Commission issues an initial or proposed decision determining the validity and amount of the claim. The claimant is afforded an opportunity under the Commission regulations to object, submit further evidence, or have an oral hearing before the Commission which then issues a final decision.

Public Law 97-127, approved December 29, 1981, authorized the determination of claims of nationals of the United States against the Government of the Czechoslovak Socialist Republic for losses resulting from the nationalization or other taking of property which occurred after August 8, 1958. The Commission will complete its responsibilities under this program and certify all awards to the Department of the Treasury for payment.

Funding for the activity covers the cost of salaries for the three Presidentialy appointed Commission members, the staff of the General Counsel's office and an administrative support staff. This staff provides continuing service, maintenance and responses to former and prospective claimants on 32 completed programs involving 750,000 claimants. Also, the staff will provide policy determination, pre-program planning, evaluation of pending claims legislation and liaison with congressional committees considering legislation intended to provide compensation to new categories of claimants.

Additionally, the Commission serves in an advisory capacity to other government agencies on matters of policy on international claims and provides advisory service to potential claimants.

**Accomplishments and Workload:** Accomplishments of the Adjudication of International Claims Program appear in the following table:

Item	1982 Actual	1983 Estimate	1984 Estimate	1985 Estimates
Decisions - Vietnamese International Claims Program.....	4	0	200	310
Decisions - Czechoslovak International Claims Program.....	70	805	820	...
Decisions - Vietnamese Prisoner of War Program.....	1	1	2	...
Inquiries on Closed Programs (Review of Claims).....	1,000	1,000	1,000	1,200
General Inquiries.....	12,000	9,000	10,000	10,000
Liaison Reports and Legal Memoranda.....	100	75	100	100
Special Reports.....	15	15	15	15

Moreton Claims Settlement CommissionSalaries and expensesDetail of Permanent Positions by Category  
Fiscal Years 1983 - 1985

Category	1983		1984		1985	
	Authorized	Program Increases	Authorized	Program Increases	Authorized	Program Increases
Attorneys (905).....	6	6	6	...	6	6
General Administrative.....	12	12	12	...	12	12
Clerical and Office Services (300-399).....						
Total.....	18	18	18	...	18	18
Washington.....	18	18	18	...	18	18

Peregrin Claims Settlement ComputationSalaries and expensesJustification of Adjustments to Base  
(Dollars In thousands)

	<u>Perm. Pos.</u>	<u>Temp. P/T</u>	<u>EDV Employ- ment</u>	<u>Budget Auth.</u>
Savings resulting from management initiatives (Reduction of GS-11 to GS-15 positions).....	...	...	...	-\$1
The Administrative directive to reduce GS-11 through GS-15 salaries through attrition and/or hiring freezes produces a net savings of \$1,000.				
<u>Uncontrollable Increases:</u>				
1. Annualization of 1984 pay increases.....	...	...	...	5
This provides for the annualization of the January 8, 1984 pay increase contained in Executive Order 12456 dated December 30, 1983.				
2. One additional compensable day.....	...	...	...	3
The annual salary rate for Federal employees is based on 260 paid days. Fiscal Year 1985 has one more compensable day than 1984.				
3. Within-grade increases.....	...	...	...	7
This request provides for an expected increase in the cost of within-grade increases. This increase is generally consistent with increases experienced in recent years and is approximately one percent above the base for compensation and related benefits for permanent employment.				
4. Health benefits costs.....	...	...	...	3
The Federal Employees' Health Benefits Act (P.L. 93-286) provided that the Government's share of health insurance would be 60 percent of the total rate commencing in 1975. Effective for the first pay period after January 1, 1984, the Department's actual contribution to health insurance increased approximately six percent due to both carrier rate increases and changes in enrollment plans. The requested increase includes \$3,000 for increased rates over the 1984 budgeted base of \$49,000.				

	<u>Perm. Pos.</u>	<u>Tot. FTE</u>	<u>EDV Employ- ment</u>	<u>Budget Auth.</u>
5. GPO printing costs.....	...	...	...	\$1
The Government Printing Office (GPO) is currently projecting a five percent increase over the 1984 printing cost of \$7,000. An additional \$1,000 will be required in 1985.				
6. Standard level user charges (SLUC).....	...	...	...	134
P.L. 96-313, Public Building Amendment Act of 1972, authorizes and directs the Administrator of the General Services Administration to charge for the use of furnished space. Although GSA has delegated the authority of certain building maintenance to the Department, organizations will continue to pay the basic SLUC fee out of which the Justice Building Service is funded. A 1985 increase of \$13,000 over the 1984 base of \$110,000 is requested. The increase reflects the Administration policy of coating the 1985 square footage at GSA established 1984 rates.				
7. GSA recurring reimbursable services.....	...	...	...	1
Reimbursable payments are made to GSA for heating, ventilation and air conditioning provided in excess of normal working hours. Also, in 1985 GSA will be rebursed for all guard services. An increase of 15 percent in 1985 based on 1984 costs of \$3,000 plus the estimated \$.30 per square foot cost for guard service yields an uncontrollable increase of \$1,000.				
8. Federal Telecommunications System (FTS).....	...	...	...	5
The FTS increase reflects the advance billing provided to the Department of Justice by the General Services Administration. In 1985, the uncontrollable increase will be \$5,000 over the 1984 base of \$2,813.				
9. General pricing level adjustment.....	...	...	...	2
This request applies OMB pricing guidance as of December 1983 to selected expense categories. The increased costs identified result from applying a factor of 4.9 percent against those sub-object classes where the prices that the Government pays are established through the				

	<u>Per.</u> <u>Pos.</u>	<u>Tot.</u> <u>FTE</u>	<u>EDX</u> <u>Employ-</u> <u>ment</u>	<u>Budget</u> <u>Auth.</u>
10. Restoration of one-time Congressional reduction.....	***	***	***	\$8
The adjustment represents the need to restore the one-time reduction made by the Congress in the Department's final 1984 appropriation. Restoration of this item will allow the efficient operation of this account. Restoration is not requested for those accounts where operations may be conducted efficiently without such funds.				168
Total uncontrollable increases.....	***	***	***	168
Total, adjustments to base.....	***	***	***	168

Foreign Claims Settlement CommissionSalaries and expensesSummary of Requirements by Grade and Object Class  
(Dollars In thousands)

Grades and salary ranges	1984 Estimate Positions & Workyears Amount	1985 Estimate		Increase/Decrease Positions & Workyears Amount
		Positions	Workyears Amount	
Executive Level V, \$66,000.....	2	2	2	...
ES-4, \$66,000.....	1	1	1	...
GS-7/M-14, \$32,722-55,538.....	1	1	1	...
GS-7/M-13, \$36,152-46,987.....	3	3	2	...
GS-12, \$30,402-35,519.....	2	2	2	...
GS-11, \$25,366-32,990.....	1	1	1	...
GS-9, \$20,965-27,256.....	2	2	2	...
GS-6, \$15,433-20,049.....	1	1	1	...
GS-5, \$13,887-17,986.....	1	1	1	...
GS-4, \$12,367-16,075.....	2	2	2	...
GS-3, \$11,017-14,320.....	2	2	2	...
Total, appropriated positions.....	18	\$567	18	\$578
Pay above stated annual rates.....	...	...	2	...
Lapses.....	...	...	...	...
Net full-time permanent.....	18	\$567	18	\$580
Other than permanent:				
Part-time employment.....	1	16	1	16
Total, workyears and personnel compensation.....	19	\$583	19	\$596
Average ES Salary.....				
Average GS/M Salary.....				
Average GS/M Grade.....				
Average GS/M.....				

Foreign Claims Settlement CommissionSalaries and expensesSummary of Requirements by Grade and Object Class  
(Dollars in thousands)

Object Class	1984 Estimate			1985 Estimate			Increase/Decrease Year-to-Year Amount
	Non-Federal Amount	Federal Amount	Non-Federal Amount	Federal Amount	Non-Federal Amount	Federal Amount	
11 Personnel compensation:							
11.1 Full-time permanent.....	18	\$567	18	\$580	...	...	\$13
11.3 Other than permanent.....	1	16	1	16	...	...	...
Total.....	19	583	19	596	...	...	13
Other objects:							
12 Personnel benefits.....	52		56		4		4
21 Travel and transportation of persons.....	38		38		0		0
23.1 Standard level user charges.....	102		244		142		-142
23.2 Communications, utilities, and other rent.....							
24 Printing and reproduction.....	23		30		7		7
25 Other services.....	18		19		1		1
26 Supplies and materials.....	19		19		0		0
31 Equipment.....	5		6		1		1
	3		3		0		0
Total obligations.....	19	843	19	1,011	...	...	168
Relation of obligations to outlays:							
Obligated balance, start-of-year.....	71		71		7%		7%
Obligated balance, end-of-year.....	-74		-74		-74		-74
Adjustments in expired accounts.....	...		...		...		...
Outlays.....	840		840		1,011		168

Mr. HALL. I am sorry, I was talking here. Did you ask a question of the Chair?

Mr. ROGERS. No; I said that that concluded anything that I wanted to make as an oral presentation and more than happy to answer any questions that the committee may have.

Mr. HALL. Let me ask one or two questions, please.

Run through what a claim for the Czechoslovakian person might be, what type claim would that be?

Mr. ROGERS. This program is a second program. Back more than 20 years ago, the Commission was authorized and completed a program—it was completed in 1962—to adjudicate claims for U.S. citizens who had had property confiscated by the Government of Czechoslovakia. Between January 1, 1945 and the date of that previous statute, which happened to be August 8, 1958, those awards were made, but except for a very minor distribution of funds, the awards weren't paid because there was no money.

It took some 20-plus years of negotiations and finally, in 1981, an agreement was reached with Czechoslovakia. Those negotiations, of course, are carried out by the Department of State, not the Foreign Claims Settlement Commission. The Government of Czechoslovakia paid an additional \$81.5 million.

Congress then passed the Czechoslovakian Claims Act of 1981 which parceled out those funds that were paid by Czechoslovakia. The vast bulk of the funds went to distribute to people who had already held awards from the Commission.

However, if someone had had property confiscated by the Czech Government after August 8, 1958, they had no opportunity to come to the Commission to receive an award. So the Congress authorized the Commission to receive new claims for losses occurring after August 8, 1958, and set aside a fund of \$1.5 million to be invested—so the total fund will be that plus interest—and authorized the Commission to receive claims for losses after August 8, 1958.

We received something over 1,600 claims. Most of them, however, are not compensable. There was a great deal of publicity in the national press about the settlement with Czechoslovakia. So there were a great many inquiries and people would request claim forms. And, of course, the Commission is in no position when someone asks for a claim form to try and say, "Well, no, we don't think you have a valid claim, we won't send you a claim form."

So, most of these claims that are filed—in fact, either the property was taken at a time when it was not owned by a U.S. citizen or it was taken before August 8, 1958. Most property was taken in Czechoslovakia before 1958.

The types of losses which occurred after that tend to relate to smaller pieces of farmland. Now, large farm estates were confiscated by the Communists early. Then there was a gradually collectivization of the smaller pieces of real property. So we get that.

Sometimes the Communist bureaucrats are no more efficient than we bureaucrats here and, yes, an apartment house should have been confiscated but nobody got around to do it until after August 8, 1958.

Sometimes you will get property that was owned by a Czechoslovakian citizen living in a house and then died. The house was then

left to American citizens and only after that—also after August 8, 1958—the Communist government has come in and confiscated it.

So those in general are the types of losses that are involved in this program.

Mr. HALL. Now, you have funds to pay those claims, do you not?

Mr. ROGERS. Yes, there are funds available.

Mr. HALL. Then you say that money to pay the—

Mr. ROGERS. Yes.

Mr. HALL. Awards of the Commission normally come from a lump-sum claims settlement agreement with a foreign country which has confiscated property.

Now, I notice in the claims that you have dealing with Vietnam claimants, there are no funds.

Mr. ROGERS. That is correct, Mr. Chairman.

Mr. HALL. Well, what do you do, make a finding?

Mr. ROGERS. The Commission makes—

Mr. HALL. And then what happens?

Mr. ROGERS. We ultimately will first inform the Department of State of what our determinations so that they ultimately can have negotiations with the Government of Vietnam.

Second, we then certify those awards to the Department of the Treasury. After money is available, such as in the Czech program, that is paid to the Department of the Treasury, and they are totally responsible for actually sending out the checks in accord with our awards.

As I mentioned in my statement, in a typical claims program there are actually three totally separate branches of the executive that get involved.

The Foreign Claims Settlement Commission, which makes the determination, looks at the evidence, tries to get as much facts as possible, makes a determination: Is this a valid claim under international law and under the terms of the statute?

After the Commission has made that decision we issue a written decision—very much like you would get a written decision from a district court or from a court of appeals. We lay out what was the nature of the claim, review the evidence that was submitted, and set forth the Commission's reasons either why this does constitute a compensable claim or the reasons that it does not.

If it does constitute a compensable claim, the Commission then reviews in this decision the evidence concerning the value. And comes up and says, we believe this property was worth  $x$  amount of money on the date of loss. Normally the award includes that plus interest up until the date of settlement.

Mr. HALL. Under your Czechoslovakian claims, when you do all of the things you have just mentioned—

Mr. ROGERS. Right.

Mr. HALL [continuing]. You then go to the amount of money that has been put into this fund to make your payments?

Mr. ROGERS. We will then certify these awards to the Department of the Treasury which will distribute. Now, they cannot distribute until we are finished with our program for this reason.

Mr. HALL. I understand that, but—

Mr. ROGERS. They have to know the total amount of the awards.

Mr. HALL. It is the money that is paid out of the fund that that foreign country has put up, in that particular case—

Mr. ROGERS. That is correct, Mr. Chairman.

Mr. HALL [continuing]. In Czechoslovakia?

Mr. ROGERS. That is correct, Mr. Chairman.

Mr. HALL. But when you do the same thing for a Vietnam claim there is no money—

Mr. ROGERS. That is correct.

Mr. HALL [continuing]. Set up to pay it?

Mr. ROGERS. That is correct.

Mr. HALL. You do all of your certifications back to the proper people—

Mr. ROGERS. That is right.

Mr. HALL [continuing]. And does the U.S. Treasury then pay that claim?

Mr. ROGERS. Only after there is some type of a claims settlement in a form provided. Once that is provided, then they will pay.

An illustration of that, Mr. Chairman—

Mr. HALL. Vietnam has never provided a fund, I am sure—

Mr. ROGERS. That is correct.

Mr. HALL [continuing]. To make any payments?

Mr. ROGERS. That is correct.

Mr. HALL. So does that money come out of the General Treasury of the United States to pay the Vietnam claims?

Mr. ROGERS. No, Mr. Chairman. They will sit there unpaid until there is a settlement.

And an illustration of the way this works is—

Mr. HALL. Well, wait now, wait. You say it will stay there until there is a settlement?

Mr. ROGERS. That is correct, Mr. Chairman.

Mr. HALL. OK, suppose there is a settlement? Then who pays the money?

Mr. ROGERS. The Treasury will then distribute the money according to the awards that we have certified to the Department of Treasury.

Mr. HALL. Do we ever try to get any of that money from Vietnam?

Mr. ROGERS. It is up to the Department of State for those negotiations, and I have no inside knowledge. I certainly have no knowledge that there have been any negotiations to date with Vietnam to try and seek funds.

Mr. HALL. How many claims has the Treasury Department paid as far as you know, on any of the Vietnam claims?

Mr. ROGERS. There have been no payments on Vietnam claims for two reasons: We haven't finished our adjudication and; second, there is no claims fund to make payments even if we had finished at this time.

Mr. HALL. If there is no money to pay the claim—I am speaking of Vietnam—if there is no money allocated anywhere to pay the claim, whatever the claim might be, you certify that it is a valid claim, correct?

Mr. ROGERS. That is correct, and the amount.

Mr. HALL. And the amount. So let's suppose you certify a valid claim of \$1 million—that may be a high figure, but let's just use it for purposes of discussion.

Mr. ROGERS. Certainly.

Mr. HALL. You certify that there is an amount of \$1 million owing to a claimant based on whatever the Vietnam claim might have been?

Mr. ROGERS. That is correct.

Mr. HALL. You certify that to the Treasury Department?

Mr. ROGERS. That is correct.

Mr. HALL. You say that they don't pay that claim to that person?

Mr. ROGERS. Not until there is a claims fund to pay the claim.

Mr. HALL. Claims fund to pay the claim?

Mr. ROGERS. Yes, sir.

Mr. HALL. Where does that claims fund originate from?

Mr. ROGERS. That would have to come, if it is done the way it has been in the past, would have to come by payment from the Government of Vietnam to the United States, based upon negotiations with the Department of State and the Government of Vietnam.

Mr. HALL. Do you have many claims that are just stacking up with the Treasury Department that should be paid that you have certified to be paid, but there are no funds to pay it?

Mr. ROGERS. The one program where there are awards which we have certified but have not been paid are awards against the German Democratic Republic, or East Germany. That program we completed in 1981. The Department of State has had a series of, I believe, five negotiating sessions with the German Democratic Republic attempting to get an amicable settlement of those programs.

There is an additional program. The Commission, years ago—well, 10 years ago—adjudicated claims against the Castro government in Cuba. Those awards have been certified and sit there but there has been no agreement with the Government of Cuba to come up with a claims fund.

Mr. HALL. Are they drawing interest of any kind, those amounts?

Mr. ROGERS. They do but, of course, in the final analysis it depends on how much money one can get as to where that interest will be paid. The way the award would read is that claimant X had property that was worth \$500,000 when it was confiscated. We have the date it was confiscated. The award would then read, claimant X is entitled to \$500,000 plus normally 6 percent per year from that date until the date that a claims agreement is reached with the Government of Cuba.

So on paper that award keeps increasing with the addition of interest.

Now, awards against Cuba, the principal amount alone, was some \$1.8 billion. With interest to date, it would be somewhere up around \$3 billion.

Now, this, of course, raises a question. If tomorrow, Mr. Castro suddenly woke up and said, "I am going to meet my moral and legal obligations, I want to pay those claims." I have no inside knowledge but I would doubt very much that he could come up with 3 billion U.S. dollars to actually make the payment.

But that is an other question that gets involved in it.

Mr. HALL. How many lawyers are working in your division?

Mr. ROGERS. Four, in addition to myself.

Mr. HALL. I mean, you say you have got 19 people total.

Mr. ROGERS. At the present time—

Mr. HALL. I am sorry, 12.

Mr. ROGERS. That is a staff of 12, that is right, yes.

Mr. HALL. You have 4 lawyers in addition to those 12 staff people?

Mr. ROGERS. No, no. The 12 includes the lawyers.

Mr. HALL. You have got 12 people altogether working on the—

Mr. ROGERS. That is correct.

Mr. HALL [continuing]. Foreign Claims Settlement Commission at this time?

Mr. ROGERS. Staff, yes. That doesn't include the Commissioners of which we have—

Mr. HALL. I understand.

So you primarily, you are working with any claims against any foreign countries by American citizens?

Mr. ROGERS. No; only where there is a specific statute that tells the Commission to receive claims against a particular country and all of those statutes have deadlines to complete the program. After the completion date, the Commission then has no further authority to adjudicate any claim against that country.

For example, if someone walked in today and said, here, here is absolute proof that I own property in Nicaragua, and here is proof that the Nicaraguan Government has confiscated that property, and I was an American citizen at all times. In other words, it is an absolutely valid international claim.

We would send them over to the State Department because we have not been authorized to consider claims against Nicaragua. If, on the other hand, Congress passed legislation and said, you may now receive claims by any U.S. citizens against Nicaragua, then we would advertise that and make adjudications on those claims that they would seek a lump-sum settlement.

Mr. HALL. All right. Then the ones as of now—and I don't want to monopolize this at all—but you have a statutory proceeding in which you operate under all these proceedings?

Mr. ROGERS. That is right.

Mr. HALL. You have statutory authority now to go against Czechoslovakia for American citizens?

Mr. ROGERS. That is correct.

Mr. HALL. You have the same statutory authority to go against Vietnam for American citizens?

Mr. ROGERS. That is correct.

Mr. HALL. What other country?

Mr. ROGERS. Those are the only two that we presently have.

Mr. HALL. All right. You say that you are doing some claim work, did I understand you to say, those who were missing in action, or those who were killed in action?

Mr. ROGERS. Under the War Claims Act, there were provisions that anyone who was a prisoner of war in Vietnam would receive \$5 per day for each day they were a prisoner of war, and did not receive adequate quantity and quality of food, or where there were certain violations of the Geneva Convention.

Now, almost all of those, of course, were determined right after 1973 when the last known prisoners of war came out of Vietnam.

The statute says that a person must file a claim within 3 years after a prisoner of war has returned to U.S. control or within 3 years after a determination of someone who is missing in action is presumed to have been killed in action. That determination is made by the Department of Defense.

As there are a few missing in action that are still outstanding they cannot come to us and attempt to show that the person was a prisoner of war until there has been that determination. So there are a few that come along on that for that reason.

What happens at that point—there has never been sufficient evidence to really establish that the person was a prisoner of war or presumably the Department of Defense would have changed their status from missing in action to prisoner of war.

Mr. HALL. Well, that is not a big part of your work.

Mr. ROGERS. No, that is just a few isolated ones which I merely mentioned for completeness of the record.

Mr. HALL. How much money are you asking for?

Mr. ROGERS. I believe it is \$1,011,000.

Mr. HALL. And that is an increase from \$827,000 for fiscal 1984?

Mr. ROGERS. That is correct, Mr. Chairman.

Mr. HALL. All right.

Thank you very much for your statement, Mr. Rogers. Now I yield to the gentleman from Florida, Mr. McCollum.

Mr. ROGERS. Might I make just one additional comment—

Mr. HALL. OK.

Mr. ROGERS [continuing]. Because you were pointing out that we are doing Vietnam claims and there was no money to pay. I think that raises a question. Why do we bother to do those claims at this time?

Why don't we wait until sometime in the future when perhaps there are better relations and there can be an agreement reached for funds?

The answer to that is because now is the time to make the determinations because the events are fresh enough in people's minds, that they have some evidence, that they have some knowledge, and we can proceed.

In the case of the GDR, we finally did those in 1978 through 1981. Most of those instances involved matters that happened right after World War II. And in many instances we had to trace back property before World War II. This was coming on so many years after that it made it very difficult, both for claimants, the Commission, everyone else, to put it together.

So in the case of Vietnam, even though, unless there is some radical changes, it may be years before there is a negotiated settlement. Now is the time to make the determinations while people are still alive and still have recollections.

Mr. HALL. That raises one question that I would like to ask.

We have had one special matter to come before this committee. I believe it was the Czechoslovakian claim, Dr. Hassick?

Mr. ROGERS. That is correct, Mr. Chairman.

Mr. HALL. Now, if I recall correctly, didn't we report a bill to enable someone to have a claim considered involving a potential claim of a million dollars or so?

Mr. SHATTUCK. The bill was acted upon by the subcommittee and is now pending before the full committee.

Mr. HALL. Before the full committee?

Would it be a proper route for some of these people who have had a finding, or a certification by your Commission that it is a valid claim against Vietnam, for those people to file a claim—have someone file a special claim for them through our committee?

Mr. ROGERS. The legislation itself that authorize the Vietnam claims specifically says that nothing there is to imply that appropriated funds would be used to pay the awards.

Now, traditionally, awards have been paid one of two ways: either by an agreement with a foreign government where they have paid money, or seizing assets of that government in this country, liquidating and using those funds.

Now, certainly there is nothing unconstitutional with the Congress saying now we will use appropriated funds to pay people that have awards. That has not been done in the past.

Mr. HALL. Mr. McCollum.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

You certainly covered most of the waterfront but I would like to clarify one or two points.

With regard to the Czechoslovakian claims since 1958, from your written testimony you indicate that Congress set aside \$1½ million of the amount which had been previously acquired, or has now been acquired from Czechoslovakia for these claims.

It also appears from your testimony that you have adjudicated losses in excess—well, you haven't adjudicated them—claims have been made in excess of \$425 million.

Mr. ROGERS. Of people that have put an amount in the claim form equals \$425 million. That doesn't include the claim forms where somebody didn't put an amount in there. So it is something above that.

Mr. MCCOLLUM. Whatever it is you are going to wind up adjudicating, may we safely assume it is going to be substantially larger than \$1½ million that so whoever gets anything ultimately out of this since 1958 is going to get only a small fraction of their value?

Mr. ROGERS. I wouldn't go that far. I believe that the total awards of the Commission will exceed the fund, which will be \$1.5 million plus interest that has accrued on that since 1981.

I am not prepared, however, to say that it is going to be many, many times that—conceivably it could be. But as I indicated before, a great many of the claims that are filed do not meet the requirements of the statute. And I think it is also very clear that all of the big factories, that type, very large awards, was taken before.

So while I am quite sure that it will exceed, I am not sure whether it will be 50 percent more, double or triple.

Mr. MCCOLLUM. Are you going to finish that work this year, do you think?

Mr. ROGERS. Yes, as of October 31.

Mr. MCCOLLUM. OK. Another question just in the same vein as you were answering for the chairman. I noted in your written testi-

mony that there were two countries that bills are pending on and that makes sense—Iran and Korea, which we haven't given you any authority for.

Do you see many people—you said some people come trooping in, and where you don't have authority, and you send them over to the State Department—do you see many of that type, or do you almost never see that, they go somewhere else first?

Mr. ROGERS. We see not too many. Of course, there is one area—all right the Commission has covered most of Eastern Europe now—claims against Poland, Czechoslovakia, Yugoslavia, Bulgaria, Romania, East Germany, et cetera. Now, of course, there are great territories that were part of Poland that are now part of the Soviet Union. There are territories that were part of Czechoslovakia that are now part of the Soviet Union.

There has not been a program which—and people who own property there who were U.S. citizens that presumably their property has been appropriated by the Soviet Union.

So we do get a number of people that come in and will say, hey, I had property in Poland. But then we find that, well, actually it is in the Soviet Union and there has been no program for that. And the numbers are not all that many.

Sometimes people come in because of an individual situation that they have with a foreign government that has taken an individual piece of property. Those we refer to the Department of State, because if there are only one or two claims, the Department of State will often assist and sort of act as broker to assist with negotiations to try and settle an individual claim.

The Commission gets involved if there is a large group of potential claimants against a potential government.

Mr. MCCOLLUM. Presumably, there are a large group of Iranian claimants. There are not many of them coming to you at this point, though?

Mr. ROGERS. No; what has happened with Iran, according to the Accords the United States made with Iran at the time of the hostage release, they set up a Commission in The Hague—three U.S. members, three Iranian, and three neutral, and a fund of \$1 billion put up by Iran from assets we had. All claims are to be filed with that tribunal.

As to a claim that is under \$250,000, the Department of State has asserted those claims on behalf of the individual. If the claim is larger than that amount, the individual, through their own counsel, files it.

The bill that presently is pending says this: If the Department of State is able to make an agreement with Iran that instead of taking each of these 2,800 so-called small claims and processing each one through the tribunal, that the Government of Iran would say we would come up with x amount of money, you would withdraw all of those claims from the tribunal, send them over to the Foreign Claims Settlement Commission to pay out of that fund.

I think the likelihood of that agreement with Iran being reached is very low at the present time but these things sometimes change radically.

Mr. MCCOLLUM. Thank you. I have no further questions, Mr. Chairman.

Mr. HALL. One other question that has come to my mind.  
When you have a claim for an American citizen against Czechoslovakia, do you file a suit?

Mr. ROGERS. No.

Mr. HALL. All right.

Suppose there is a claim made by a Czechoslovakian citizen against the United States. Do you handle that claim?

Mr. ROGERS. No.

Mr. HALL. Who handles it?

Mr. ROGERS. If it is a claim against the Government of the United States, presumably it would be presented by the foreign ministry of that foreign government to the foreign ministry of this Government.

Now, if it is a commercial matter and if it is General Electric that they have a claim against and they have assets of General Electric in France, or where have you, I assume they sue in the French court and try and tie up those assets that are there.

Mr. HALL. We thank you for your testimony.

Mr. ROGERS. Thank you, Mr. Chairman.

Mr. HALL. The subcommittee stands adjourned.

[Whereupon, at 10:50 a.m., the subcommittee was adjourned.]



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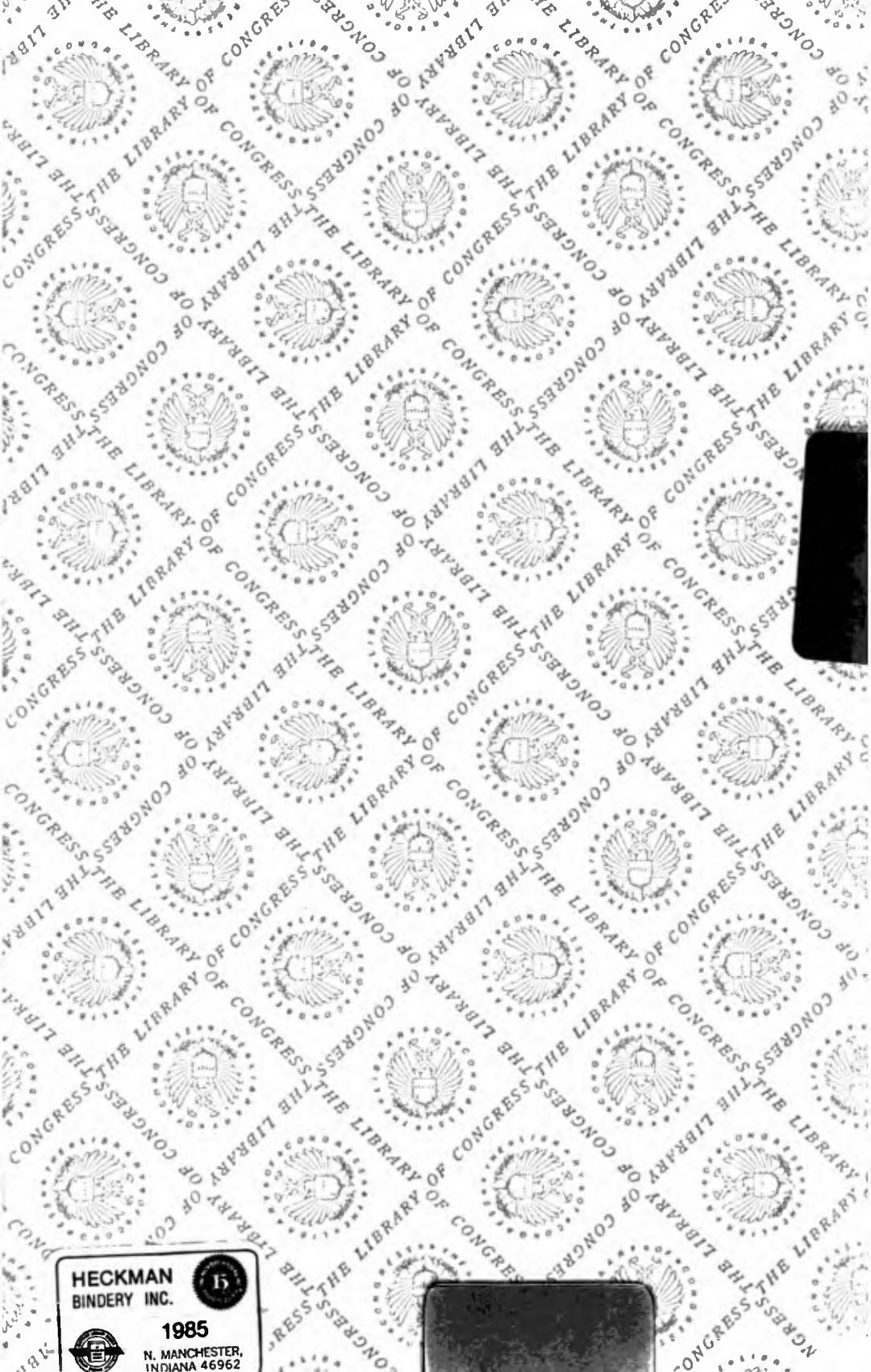


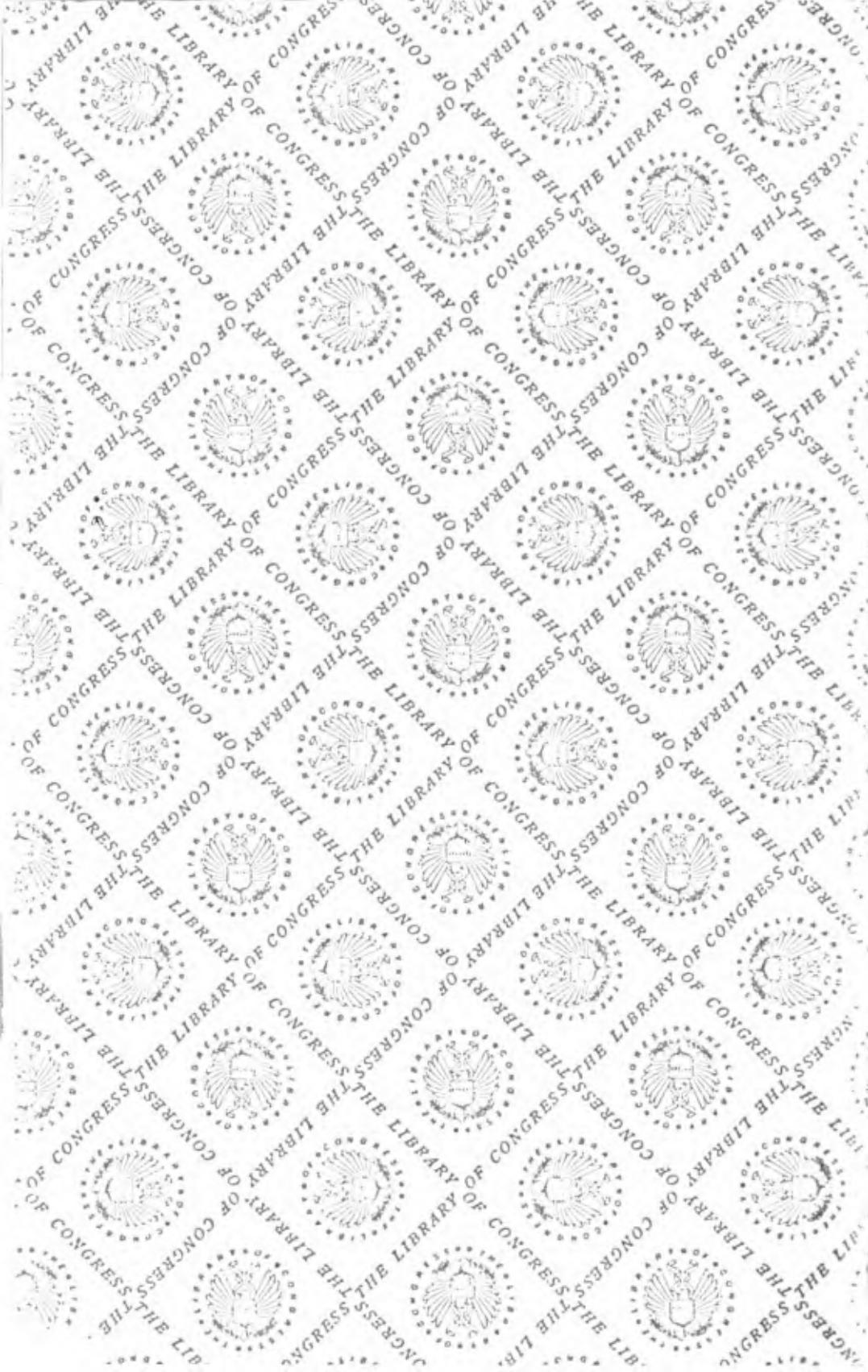
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